

**Peter Kosinski:** I'd like to welcome everybody to the meeting of the State Board of Elections here on December 8, 2016. I'm Peter Kosinski. To my right is Doug Kellner, Commissioner. To my far right is Andy Spano Commissioner and to my left Greg Peterson the other Commissioner.

We'll start today opening up as a State Board of Canvassers with purposes of certifying the general election of last month and if we have the paperwork that's necessary for us to sign certifying the election results.

**Douglas Kellner:** We'll I'll move that we approve the report of canvass as prepared by the staff and then we sign.

**Bob Brehm:** Just to give some information, we have everything prepared for you to certify today except there were 2 court orders in senate district 5 and senate district 8. When those get resolved we will come back to you to do those. We have Presidential Electors, United States Senate, Justices of the Supreme Court, all the representatives in Congress, State Senate minus those 2 senate districts and all the Assembly members.

**Peter Kosinski:** Does your motion include all of those certifications?

**Douglas Kellner:** As prepared by the staff.

**Peter Kosinski:** We have a motion to approve. Is there a second?

**Gregory Peterson:** Second.

**Peter Kosinski:** All in favor?

(Chorus of ayes).

**Bob Brehm:** We'll start and go around for signing?

**Peter Kosinski:** Yeah, we'll sign them now while we're here and get those done.

**Bob Brehm:** It would help us to at least sign right now the top 2 that need signatures from outside the building today.

**Douglas Kellner:** So what Bob is referring to is the certification of the Presidential Electors has to also be signed by the Governor and the Secretary of State and has to get to Washington by...

**Bob Brehm:** Tuesday but they're going to receive them tomorrow. There are 10 sets for the Co-chairs to sign. There is one set that all four Commissioners sign and then there's 10 sets. There's 10 pages to sign. An original has to go to so many different locations for the Electors.

**Douglas Kellner:** Alright here are the 10 on the Electors.

**Peter Kosinski:** So the 2 Senate districts that are not on here they'll be certified by the court or do we have to come back and do those?

**Kim Galvin:** You have to come back.

**Douglas Kellner:** Constitutionally the Senate doesn't need our certification to seat someone.

**Todd Valentine:** Right. They'll probably seat them based on the results.

**Bob Brehm:** There's no signature page, they're going to get it.

**Kim Galvin:** It's really crazy the amount of work that they're signing right now that looks like just signatures.

**Gregory Peterson:** Anybody watching the web thing right now is probably asleep.

**Kim Galvin:** Although that's a lot of work. That's months and months of work that you're signing in total.

**Bob Brehm:** The State Assembly, I just don't have the signature page. They went to get it so as soon as that comes, we can have you sign those. If you want to go on.

**Peter Kosinski:** I'd just as soon get this out of the way.

**Peter Kosinski:** Well I noticed we had one in there for Senator Schumer that we signed. Did everybody else get something you sign is that how it works?

**Todd Valentine:** Yes.

**Bob Brehm:** We certify to the Senate and the Assembly and the Congress a copy of what you 2 signed.

**Peter Kosinski:** No I was talking about the individual certificates. Senator Schumer had an individual one that we signed.

**Bob Brehm:** You signed 2 originals for United State Senate. The Governor gives us 2 certificates and we attach an original to each of those; one we keep in case we have to send it somewhere else and one goes to the President of the Senate.

**Peter Kosinski:** These go with this I take it? This is the signature page. Does that complete our signing? Alright then I'll entertain a motion to adjourn as the Board of Canvassers. A motion, is there a second?

**Gregory Peterson:** Second.

**Peter Kosinski:** All in favor?

(Chorus of ayes) and so we are adjourned as Board of Canvassers. We will now open as a Board of Commissioners and the first order of business are the minutes of October 4<sup>th</sup>, October 13<sup>th</sup> and October 17<sup>th</sup>. I don't know if you want take those as a group or individually but I would entertain a motion to approve.

**Douglas Kellner:** Well I only got them last night and noticed a couple of typos in them and then also wherever they use the word feel when they described Commissioner's statements and I'd like to use a different word than feel.

**Peter Kosinski:** So you'd like to hold those over. So moved.

**Douglas Kellner:** I'll mark them up and send them back.

**Peter Kosinski:** So we'll hold up on the minutes of all 3 of those meetings including the Executive Committee which I just got this morning. I'd like to have a chance to look at those before it was approved.

**Douglas Kellner:** Well it was the Executive minutes, I'm sorry, yeah. We'll hold up all of them.

**Peter Kosinski:** Okay fine we'll hold up all the minutes until the next meeting and if you have issues you can... Yeah I had some too frankly, they got addressed with mine but the Executive I haven't had a chance. So we'll hold those up until the next meeting and approve those then. So lets move on to unit updates. Our first unit is the Executive Unit, Bob Brehm and Todd Valentine.

**Todd Valentine:** Well, you just court of canvassers completed. What Kim was mentioning during the meeting was it's really for President it's over 2 years to get to that point, that's the finale of the election. So it seems like a little bit of paperwork that actually represents a very long process that was involved with the primary, ballot access for that and obviously the Senate and Assembly also had their own primary so there's a lot that went behind it, that's just the last step.

**Douglas Kellner:** Actually we had the meeting of the Electoral College a week from Monday.

**Todd Valentine:** So that's not actually the last step. So that obviously is where we spent the bulk of our time and working through the election and prior to that one of the things that we were focusing on specifically was the subject of an Assembly hearing that Bob and I and our IT guy Bill Cross testified at was with regard to cyber security in elections and there were a number of challenges or issues that were raised in August, towards the end of the summer there were concerns and we worked to address short-term issues as well as to identify long-term issues. And obviously the thing that we wanted to specifically identify to the Assembly and we certainly

raised it with the Senate as well and the Governor's office that you know, there is more work to be done and we don't want them to forget about it because we operate in a slightly independent model from the rest of the state IT world. I mean we are of them but we have our own independence in order to maintain our own control and security.

**Peter Kosinski:** So when you say there's more work to be done what do you mean by that?

**Todd Valentine:** Well we addressed issues that were to ensure that there was a shield around the system so that it wouldn't get broken into or I should say compromised in some way. What we need to focus on in long-term is the event what we talked about what we call it logging when anybody accessed the system you can detect an intrusion, your ability to respond to that and that takes more resources because of the Internet based nature of a number of our programs. Our communications with the counties are to be honest, the weakest link in our chain. We're confident in our security but we get the voter registration data and the election night reporting getting sent to us from the county and we can have those encrypted but what we're not specifically responsible for and we recognize the county base need but its still a problem is that they, the county is responsible for their own security and what we knew and what we were trying to education our own state IT officials and certainly the Assembly at the hearing was that those IT resources related to elections are not necessarily the control of the Board of Elections. In many instances they're in control of the county IT department and so the infrastructure that the county boards are relying upon is also the same infrastructure the counties are relying upon for social services, department of labor, department of health, the interactions that they also have, they need to make sure that those portals are secure as well. So I don't know what we're trying to identify with but it's not necessarily the Board responsibility to control all of the counties IT departments. We simply don't have that resource. What we can do and what we did through the fall was to work with the Association of Counties, the Association of County IT Directors as well as our own State Homeland Security, State IT resources and certainly the federal homeland security and the federal Internet Security Division the multistate people so that we can at least have a communication branch when they identify an issue, we can pass it along to the counties, but the resource that we're going to be missing is and this is a much bigger problem is that the counties are going to have to do work on their end. We can secure it as best as we can but they're still going to have to do the input on their end. They're still going to give us that information and we're going to set up our own firewalls to make sure that malicious things don't come in with the election night reporting or the voter registration. Those were already in place but we're also going to want to detect our own website which where we post website look up. People can do their voter look up. They don't just to simplify this, people don't actually look directly into our database, there is a separation. We've always had that, that's not new but the platform we're running on is not a new issue. We've identified that with budget and IT 2 years ago that it's still running on an old Windows platform that is no longer being supported. Now we've protected it as much as we can but those are resources that's not just a problem with the State Board that's a statewide problem. We tried to identify that but we're hoping that we can get the money to put the long-term solution so we can detect problems and then log them so we have an ability to go back and look to see if there were intrusions. Now Bill can go into more technical detail if you want him to but it's about protection and detection or intrusion is really the 2 parts that we're trying to focus on. I think we're pretty good on protection. I mean nobody's

ever perfect. There's no such thing as a perfect system but that's why you have the detection so that if there is any breach in security you are able to know that and then the third part is obviously, how can you remedy that and backups come in. We've certainly spent a lot of time over the last 2 years to increase our disaster recovery abilities and we spent a great deal of money rebuilding our infrastructure so that we have a much more robust system for backup so that if we do have a breakdown we can stop it, make it clean. Say for example, somebody tries to do Ransomware to us, we say we're not paying ransom so we're just going to cut off. We may have some lost data but we know we have backups either on our own system or the county system where we can reconstruct that data. But, you know, it's not the sexiest thing but it's the backbone of everything. On top of that we're still trying to finish and Bill an go into more detail on this, we're still trying to complete our upgrade to the Voter Registration System at the statewide level as well as our ongoing project for the upgrades to the campaign finance system all at the same time that we want to make sure that our security for the operating we still have to run day to day. So that was one of the biggest things that we unearthed was that we didn't really have a sandbox so to speak so if we needed to test new things, let's test in this environment. We didn't really, we hadn't really had the ability to set that up so again that's something we're looking at and really have a dedicated, while we have a security officer he probably could use more assistance in that area and that's why we've identified an increase in personnel as well as equipment to support that.

**Peter Kosinski:** So you're asking for more people in next year's budget to...

**Todd Valentine:** Well, the budget as we expect it to come out and that relates to the other thing to talk about was obviously the call letter that came out in September indicated, we mentioned this at the last Board meeting is a zero growth budget. That doesn't necessarily work for us in the environment we're in because we have these major projects which are going to come to a conclusion certainly either in this fiscal year or towards the end of the next fiscal year and that they're going to need ongoing support. So yeah, one of the side, we don't call it a side letter anymore, its whatever its called, it used to be called that but its basically the side letter where we identified the needs of the program to the Division of Budget and certainly to the Assembly and Senate that here's the resources we could use in addition to that. Whether that's forthcoming or not in the Governor's budget when it finally gets released in January, I don't know. Or, a part of the 30 day amendments, we don't know at this point. We haven't seen the final budget. We know what we've submitted and what we had to which was a zero growth budget because that would be the only one they would accept.

**Peter Kosinski:** What else are you asking for?

**Todd Valentine:** Besides the IT we still need, this has been an ongoing problem is the support in our administrative area.

**Peter Kosinski:** No, I mean in the IT area what more resources do you need in the IT area that we don't currently have?

**Todd Valentine:** Well Bill Cross can go into more details on that.

**Peter Kosinski:** Sure. Do you want to wait, do you want to do that now Bill or do you want to wait until...

**Bill Cross:** Sure.

**Andy Spano:** I have a question just for clarity. The weakness you identified in communicating with the local Boards of Election, that doesn't exist with DMV and the rest because they're part of the state system right? When they send in registrations? Or does the same thing...

**Todd Valentine:** Well it does because the DMV communicates directly through the counties. They have different private network.

**Andy Spano:** So they have a problem with that...

**Todd Valentine:** They're going to have the same issue yes.

**Andy Spano:** How would, if we went to statewide online registration would that increase the problem since its coming from individual computers and everything all over the state?

**Kim Galvin:** Always.

**Andy Spano:** What does IT say?

**Bill Cross:** It's scalable as to what we have now. Obviously higher volume higher potential. The one thing I would add is DMV is separate communications path. Has their own touch points with the county. I can't expand a lot on what Todd provided but in terms of your question about the long-term vs. the short-term thesis, we put a lot of temporary measures in place for the election. We utilized services from state IT, multi state cyber security group and they're intended to be temporary in the timeframe that we could implement them before the election. What we need to do is replace them for ongoing protection. Cyber security is constantly changing. It is not a set it and forget it situation. So the longer-term piece is to replicate some of those same capabilities for us going forward on our own and the resources would be involved in monitoring those, staying on top of it and greater interaction with the counties. Because one of the things we recognized is the counties have varying levels of resources and capabilities and that became extremely apparent as we're reaching out to them to asses their environment. So more of a resource to interact with...

**Peter Kosinski:** So do we provide resources to the counties that need it for purposes of upgrading their operations to make them compliant with what we thing is necessary to protect the integrity of the system?

**Bill Cross:** The Board issues guidelines for them in terms of support direct, person-to-person support. We provide equipment to connect to us and we support that but everything behind that

is their infrastructure that we don't have a view into and quite frankly they don't always have a clear picture either of what that looks like.

**Bob Brehm:** I think with the alerts we receive we recognize that more needs to be done on both sides and when the initial alerts came out there were some recommended sites.

**Peter Kosinski:** I'm sorry, alerts you're talking about?

**Bob Brehm:** Well the alert that came to the State of New York and it mostly came through third party agents that Commissioner Kellner and Rachel Bledi serve on the Standards Board for the State of New York so the Federal Election Assistance Commission sent a note to them that the FBI had issued an alert that there could be hacking in the election, they forwarded it to us.

**Peter Kosinski:** You're talking alerts from the Federal Government to the state?

**Bob Brehm:** That there was a potential problem. Around the same time we heard from the State infrastructure security people who in our case happens to be Dave Loomis, our former IT Director is our point of contact for that. He called us, he contacted Todd and I very late one night and said, there's this issue. It took about 2 days for an in-person meeting for them to tell us that the intrusion was not to the State of New York system but it was to some state but they knew it wasn't ours. So clearly the two days we were driving William crazy trying to figure out what happened. The communications got better as we went on but that initial alert recommended that we reach out to the county Boards of Elections telling them that they were at that time about 6 IP addresses that they expected were from bad actors and that they had asked us to contact the counties, ask them to review their system if they had been an attempt from these 6 bad actors and report back to the infrastructure people. We did that and we immediately learned that clear Boards of Elections staff didn't know how to inspect their IT process. It was their IT directors that needed to. So we included who we knew to be IT Directors in that conversation. We immediately learned that IT Directors didn't know how to do this work. so our communication, and we had a great team of people, it wasn't just people in this building sitting in the room, we did have the State Police, Homeland Security, State IT people who knew to do this, coming together, contacts through the FBI as to what was happening. We asked the group to give us help because we were doing everything we possibly could to assist in the building to protect our system but we didn't have enough resources to reach out to the counties who basically said, "Help us". And the State Trooper contact, they have an acronym and I don't know the proper one for them did reach out to those counties that did not respond to our survey and to say, they either gave us an answer to the survey that wasn't believable, a large county said, "We had no Internet connection for elections". We knew that didn't make sense so they had to reach out and help them, and that came from the IT Director of the large county and small counties alike. So we succeeded in reaching all the counties to have that initial review done and recommendations of what to do to monitor. But by the time we got the second alert that 6 IP addresses turned into 600. So there was an awful lot of working being done to answer counties questions, support counties, secure the system and make redundancy. And as Todd said and William, there were several suggested fixes that the test of the system would impact the other systems that were running to run the election. So they did as much as they could to not cause more harm towards

the election and to provide as much security as possible based on our conversation with the security professionals. But we knew we needed to do more going forward and our budget request within the building a higher standard of people to monitor our system to make sure that it is safe and secure but we need a liaison to the counties. I don't think, from our experience, I don't think it would be successful if we just simply set guidelines to counties, you're on your own go do that. So we had asked for help in the building to make sure that we could be comfortable that we have a liaison to them to implement guidelines because more needs to be done on the secure end of their systems. And at the Assembly hearing, there were a lot of questions and we keep hearing from the IT professionals that these attacks happen all the time. So we can't quite figure out at the local government end since we're a bottom up system, it feeds into the state system for many different functions that we perform, is how do we protect the election information we receive when its running on the county with so many other points of attack whether it be social services or any other agency? So the Assembly was very interested in how can we protect the election and our answer was, "Until you protect it all I don't know how we only protect elections" but we simply need to do more. We don't have all the answers on that end. We weren't able to answer all the questions other than we know to protect elections you have to go beyond, you'd have to isolate the election infrastructure from the rest of county government or you have to make sure the rest of county government is...

**Peter Kosinski:** Which in essence what we've done in the state. Is that fair to say? That we've isolated the election component with the state?

**Todd Valentine:** Yeah and the good thing about this was that there were no breaches, there were no catastrophic problems. I mean yeah, there were detections of some people but they were all shielded so at the end of the day the work that was done not just by us, as Bob said, it was quite a large team effort from our perspective it was successful in New York. That doesn't mean that we're still not vulnerable. But yeah, part of our greatest strength in our election system and not just in the State but in the country is that it's really a divided system so that it's disbursed so there's no way to compromise the entire system at one point in the process. It all sits very isolated but on the other hand, those are a lot of points that somebody could breach the system and at least impact a small part of it and that's the concern we're trying to address going forward. Better than what we've done in the past.

**Bob Brehm:** We're looking to bring representatives of IT and the group that we worked with together for the Winter Conference to give best practice recommendations to the counties, answer their questions. We did talk to the ECA about including that as an agenda item. We got a contact for the State Information Technology Directors at their own association to bring in the President, I think its from Livingston County if they would help to bridge that gap because most county Boards of Elections and even the city Board of Election they run their applications on city wide computers the only thing that's separate is the voting machine which early on everybody at least said, "Well at least they're not necessarily tied here, they have their own chain of custody and operations" when we first got the alert reinforced with the counties the guidelines that we had issued early on for the physical chain of custody issues related to voting machines to make sure if they were new people that weren't familiar with all those procedures to make sure that they honed up on them. So, clearly we did not expect the resources into this area. It took a great



amount of IT staff and others and counties leading up to the election at what was traditionally our busiest ever time in a 4-year cycle. So a lot of people should be thanked for the help they gave but there's a lot more we need to do and it's only I think it's only the start of awareness that we need to include this more.

**Peter Kosinski:** Are there any other questions on this or do you have anything else to offer on this topic?

**Bob Brehm:** Well 2 things; since we mentioned budget, I think its helpful to find out that Joe Paolucci who is affectionately referred to as Joe Budget is requiring so he will just be called Joe from now on. He has brought his replacement Daniel here, Heefey is his replacement. We met about a week ago to become comfortable with each other with budget. After Joe had announced his retirement, our other contact Tim Eskeli had passed away for those of us in the Open Area. Tim had worked for almost 30 years in government, community, young man died suddenly so we're sad to hear that news also. So there will be big changes with our relationship with budget. Hopefully we'll work some...the only other thing I think is helpful to say, a number of other meetings have taken place to keep the lights on in the building. I think the one other one that we raised with the County Commissioners in the call is there were a number of items leading up to our election day that really began with the failure of the DMV system in March to handle the load that was receiving in the "It's My DMV" program. As we remember on the last day to register the system was struggling throughout the day and it crashed and it was one of the items that was raised leading up to the April 19<sup>th</sup>, Presidential Primary. DMV revamped the system to deal with a greater capacity so it crashed on March 24<sup>th</sup> at about 9000 daily hits or people trying to use it. It was creating big jams in what it was sending to counties because the files were not sent daily they were sent twice a week. So DMV had taken a step to correct that, to send the files daily so that they weren't big files, they were smaller files and on the last day to register for the November general election, their daily hit was about 67,000. We did not recognize and we continued monitor like daily leading up to that deadline those numbers to make sure we didn't have a problem before it was too late to do anything about it. So that worked well. But that didn't mean there weren't as we got closer to Election Day, other things that needed to be fixed. Immediately after the election, we asked DMV to sit down with us and they did to find out how best to resolve additional items and I think they were receptive to our ideas. They said they were going to take them back and work out a confirmation so that we can get it out to the county boards, we were hoping this week, but this week's not over yet. And they also agreed to come with us to the winter conference.

**Peter Kosinski:** I'm sorry, confirmation about what?

**Bob Brehm:** A number of the changes; 1) when they upload a file for the counties to receive, some counties are, I'm not sure of the right word, they're not, there are uploaded files that are missing I guess is a way to describe that. DMV's system claims that it will not remove it from the folder for the county to download from until the download is complete. The counties are claiming they do the download and then it's missing. So that's both part internal controls, if you sat at a computer to download this folder to do work and immediately upon it being downloaded, you can't find it, people waited 2 months to call and say, I lost the folder. So, 1) we wanted to

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put in place a better check and balances that they can keep track. If they lost a folder they could access it without having to go outside their office to do so we asked DMV to do a couple of things; 1) send an e-mail message to every county with also a count, if you have anything in the folder to download it will have a number otherwise it will say zero. So an alphabetical list of the whole county, DMV agreed they would send those out nightly. So counties at least have an e-mail to tell them there's work to do. And people could track it, what happened to the 10 things that DMV said I had to download? And the other is once the file is downloaded, DMV would remove it. So a county couldn't even reattempt to access the file. So DMV agreed to keep the files in an archive for those counties for a period of time. We had recommended 30 days and they were going to go back and confirm their system could handle that. And that way, a county both had an e-mail, a download and a way to track them. And the third item that they were correcting or that they were implementing to try to provide a better check sum so the county would know its missing is DMV was labeling the file like your county name with a date. So if you're in New York City and you get a file everyday, you kind of know I'm missing a day. But if you're Hamilton County you may get a file once every 2 weeks, its hard to know that it's missing. So DMV said they were going to sequentially number the files for each county so you will be able to easily see if your sequential number is missing. So they were going back, they originally were going to do some of that, we recommended a little bit more that's on that list. They agreed to do it and they were just taking that information back to, the other thing we wanted to make sure if we gave them rights to our county contact list because we keep that list up to date with the Commissioners, the Deputies the county tells us are the right people to contact. So if DMV is sending that nightly e-mail out, it's going to be our list of people that receive that message which I believe that's what we've accomplished also. So that was our meeting since Election Day. DMV is working on the details of that message. We shared the overall plan with the counties on the call that we had with them last Thursday and we told them we would cover it in more detail at the Winter Conference. I think that at least what's in place is a better mechanism to track what happened to these missing folders in a way that there's still a responsibility to the counties to keep track of them but we've provided I think redundant ways of tracking and doing internal control to know that something needs help. So I think that will improve it, I don't know that it will solve everything but we certainly will continue to monitor if there's more work that needs to be done. I think that's the only other large item that we had.

**Peter Kosinski:** Have you anything for the Directors? I think that was a pretty thorough report. I will say this, from my perspective there's been so much talk out there generally in the media about the concerns lots of states have had about the integrity of these election systems. I think it's important for us to talk about it, let people know we're on top of it and doing whatever we can to, even though I know New York wasn't one of the states that was at risk really, you never know. So I think it's good to be on top of it. I would ask that you report back to us on progress that you're making in this area as well as you go forward. Next is Counsel, Kim Galvin and Brian Quail.

**Kim Galvin:** I did literally forget what I was going to say. After the election there's been a lot of post election clean up questions, calls, concern particularly out of Nassau County and some of the closer races that we've had that have engaged the attorney's quite a bit in addition to all of the other cases that have been twirling around, taking a lot of attorney time and monitoring and

calls with the Attorney General. We have had two or three meetings with Enforcement regarding trying to nail down the deficiency training criterion issue and trying to create or figure out some sort of feedback loop for continuous communication with one another to keep better track of things. I believe we're going to meet again. We have some of the items that we can speak of on the specific agenda when we get to those points. Our training unit has recently finished the Winding Down Your Campaign webinar and has posted it to the web and is scheduling the webinars as well as updating some materials. Staff has continued to participate in the CAPAS-FIDAS meetings with IT and Bill. And we also recently learned that IT, which we thanked them for is going to roll out with the Compliance Unit, I'm not really aware of the details of it yet, I just found out yesterday that a new case management tracking system so that maybe we can have a better way of keeping track of the committees and the various filings and things that are going on with each individual filer and that will be in place before the January periodic which is very helpful to us. That seems like a little bit but it was actually quite a lot of work. Do you have anything to add?

**Brian Quail:** Just a few things really. First, I mean obviously I think the Commissioners are aware of them but we're continuing to, we're involved in roughly a dozen cases in one manner or another, 2 of which we're getting ready to move into fairly extensive discovery mode. So obviously that has occupied a great deal of time and energy for the Counsel side of the unit. I also think it's always helpful to the Commissioners who have asked questions about this on a number of occasions, to just keep of the macro metrics of where we're at on things and actually before I segway into that, just very briefly, I'd like to just echo what Kim said. We have had 3 very productive discussions between Compliance Unit staff, several staff members and several staff members with the Enforcement Unit on deficiency related things and I'm very much looking forward to our next meeting which was originally scheduled for the 20<sup>th</sup>, I think we're going to have to try to move that up so we can continue that good progress. But in terms of the macro metric on non-filers, since the inception of the Compliance Unit, we have identified, they have actually identified themselves 6,995 non-filers and of those roughly 4,991 roughly 5,000 have still not filed. So that obviously represents a challenge for the agency and for disclosure.

**Douglas Kellner:** What is the number of open non-filers? In other words, people who still owe reports today.

**Brian Quail:** Since the inception of the Unit 4,991.

**Kim Galvin:** Which is 2014.

**Peter Kosinski:** That's since which the Compliance Unit was created you mean?

**Douglas Kellner:** September 1<sup>st</sup>.

**Peter Kosinski:** September of 2014 right? So you have 4,991 is that...

**Douglas Kellner:** That's what's still open right? People who still haven't filed after all the notices?

**Andy Spano:** From 2014. What happened to anything before that?

**Kim Galvin:** They're still hanging out there too. We have...

**Andy Spano:** How many are those?

**Brian Quail:** I don't actually have the number.

**Kim Galvin:** We had the number somewhere. It's this file. I don't know...

**Douglas Kellner:** But all of those have court orders.

**Kim Galvin:** Most of them yeah. Your judgments. Well this goes up to present date.

**Douglas Kellner:** Yeah but there wouldn't be any from before September '14 that don't have a court order...

**Kim Galvin:** That is correct. Yeah, but there are some more recent ones that do not that are also on this list. But I don't know what the total is.

**Brian Quail:** And that really is my only additional...

**Douglas Kellner:** And then on deficiencies? Is there is agreed list of what's been referred to Enforcement for people who are deficient filers that we've referred to Enforcement?

**Brian Quail:** Yes. We spent a good portion of the meetings...

**Douglas Kellner:** And what's the number on that list?

**Brian Quail:** And I apologize for not knowing the exact number, it started off as 1725 and there was a certain number of duplicates that came off. So, roughly speaking and I apologize for not knowing the exact number.

**Kim Galvin:** I think it was like 40 that came off as duplicates.

**Andy Spano:** Are these part of the discussion that you're having with Enforcement?

**Brian Quail:** Yes.

**Douglas Kellner:** So these are 1600 uncured deficiencies that had been referred for Enforcement?

**Brian Quail:** Yes.

**Risa Sugarman:** Well that's not accurate.

**Douglas Kellner:** Well it's important to figure out.

**Risa Sugarman:** The last list had 844 records, it's not indicative of the number of committees however.

**Peter Kosinski:** Yeah I guess these numbers, I'm trying to kind of understand them too. So when you're talking about 4,900 failures to file since September of '14 that's not 4,000 committees?

**Kim Galvin:** No, that's individual reports.

**Peter Kosinski:** its individual reports. So one committee could have multiple reports.

**Kim Galvin:** Well I think the maximum is 6 or 8 since then.

**Peter Kosinski:** So some committees will have probably the maximum of 6 if they haven't been, Risa it's more than 6 isn't it?

**Risa Sugarman:** William Boyland had 28 so I don't know.

**Peter Kosinski:** 28, so there's some committees with multiple presents its not 4,900 individual committees, you're talking about individual filings. You can't quantify within that how many individual committees are involved or can you?

**Brian Quail:** We can.

**Peter Kosinski:** You could? Not that it's that critical, I just...

**Brian Quail:** If I used the wrong term I apologize, its filings that are that is the term I should have used. I believe that the number of actual discrete committees is roughly 2,035.

**Peter Kosinski:** Oh, so it's still a large number.

**Andy Spano:** Is there a plan on how to clean this up? Can you guys discuss a plan at your next meeting and come back to us with something?

**Risa Sugarman:** Well that would be me. And what I've been talking about, well what we've been talking about and what I've been talking about is to develop the contact through e-mail and we've been working on that process. We had a mailbox set up, it had a little bit of a hiccup, we were going to do those notifications by e-mail. We had to, with IT's assistance set up a new what's it called, a mailbox, the one that we set up initially didn't work. So we had a do not reply mailbox. We now have that developed and we're going to notify certain sets of committees that I think the first one we're going to do is those who failed to do the primary cycle filings. So

we're going to try a test because it's a small test unit, it's a smaller group of people to do a notification to those committees that have a failure to file on the primary cycles. And then we're going to see how that develops and how the response comes back on those failure to files. And then we'll be able to gauge what the response is on those failures to file so that when we contact those committees, because when we looked at the numbers of committees that didn't have e-mail addresses, it was a very small number, I think about 40 of all of the numbers of committees on the failure to file list did not have an e-mail contact because they have to have the e-mail contact to do a filing. So that will be our first attempt to do a contact through an e-mail and then we'll go from there and see what, because when we've sent out the notifications even by letter, we've had a good success in getting people to file. So that's going to be our first attempt to do that and that should be going out I hope next week. And then we'll go from there to get people into those compliance, trying to get them into filing.

**Andy Spano:** So, basically what you're looking at is a plan to get down to a zero situation?

**Risa Sugarman:** Hopefully. I don't know that's...

**Andy Spano:** Over what period of time?

**Risa Sugarman:** Well, it depends how well we do with the small targeted group and then we'll expand the groups over that. I mean I can't give you, hopefully it will be an easier lift for us to do it by e-mail and get those blast e-mails going out to the targeted groups. It took us a little time, the back and forth to get the e-mail data and then we were able to with Commissioner Kosinski's help get the information to provide the letter that's going to go out. The e-mail data is forthcoming. Now we have the little hiccup of getting the working do not reply e-mail address and now we hopefully will be able to do those targeted e-mail outreach.

**Douglas Kellner:** Kim had something.

**Peter Kosinski:** I'm sorry do you want to say something Kim because I had a question.

**Kim Galvin:** Well go ahead Commissioner.

**Peter Kosinski:** I guess my question is you said you're going to do a small universe initially and then you're going to see how that works. I guess I'm trying, what would be your gauge of how it works? Of success I mean?

**Risa Sugarman:** I'm not sure. I mean I have to see hopefully we'll have a response that we'll be able to get people into compliance. It's a first, I think the first time that we did a mailing, we got about I think it was a little over 60% response in the e-mail.

**Peter Kosinski:** But response would mean they filed?

**Risa Sugarman:** They filed. They filed their reports. And to me in comparison to the filings of the lawsuits which I don't believe had the response of getting people to file, I think the goal is to get people to file their reports.

**Peter Kosinski:** I agree with that goal. I guess it's a question of how we get there. So you're strategy is to first contact them and say, "We have on record you have not filed the following reports. Please file".

**Risa Sugarman:** Contact us or please file. These are the reports that you owe us...

**Peter Kosinski:** And then if you don't hear back from them?

**Risa Sugarman:** Then the next step would be to because of what the statutory language is I think we need to send a letter and then we'll need to either go in an investigation towards criminal referrals or to do a hearing officer. It depends on what their history is with their non-filers. Now when we were talking about the deficiencies, we did a couple of statistics. There are some of the committees that have both deficiencies and non-filers. Those cases we might treat differently than just the non-filers or just the deficiencies. It really needs to look at what the committee's history is. If there's a deficiency and a non-filer, the statute is written that when a hearing officer looks at whether or not the matter should be dismissed, they have to find whether there's a de minimis, what the history, how the committee attempted to or did not attempt to come into compliance and what the history of that committee is. So that's what we have to look at as well. Do we go the criminal route? Because the Attorney General's office has gone forward in two matters and arrested and charged two candidates on failures to file and I believe that they would be willing to go forward in more cases like that. Are these cases such that we should proceed on criminal referrals or should we go civilly? It's not an easy decision. It's just not, yes, we'll go one way or the other. It has to be looked at and what's the history, how should we deal with these cases?

**Peter Kosinski:** Okay so you're prepared right now to move forward on a universe of failure to files that you've identified? Is that what you're telling us today?

**Risa Sugarman:** Yes, that's one of the things we'll do as well as the deficiencies.

**Peter Kosinski:** Okay I guess I see those two a little differently. So in one category there's the failures to file and then in a separate category there is the deficiency. Deficiencies being those that have filed...

**Risa Sugarman:** Obviously.

**Peter Kosinski:** And they've been identified as not a complete filing.

**Risa Sugarman:** Well there are filings but there are mistakes.

**Peter Kosinski:** There are blanks or some deficiency...

**Risa Sugarman:** Some deficiency in the file.

**Peter Kosinski:** Now in that category do you have thresholds that committees have to meet in order to be deemed efficient as opposed let's take for example I'm a committee and I filed everything except one address is missing on a contributor. That's a deficiency but is it of such a nature that it would trigger some action by you or is there like a threshold you have to have?

**Risa Sugarman:** Well that's a conversation that we've been having with Compliance. Those are...

**Kim Galvin:** And that's what I'd like to chime in on in this particular, because I just I have a real problem and I've spoken with my Commissioners about it so if you wouldn't mind I would just raise the issue for all of us to hear and perhaps we could come to some sort of resolution.

**Peter Kosinski:** Sure go ahead.

**Kim Galvin:** As Ms. Sugarman and Brian and I have said, we started, when we created the Compliance Unit we started in with like strict liability because you're missing one address, fane deficiency and then we got a lot of grief from everybody and rightly so. I mean it's not really fair, you miss one address on a report or one house number on a report. So we met with the Enforcement Unit and we took some things that were deficiencies and we moved them over into training. Now if it becomes a training issue, our unit sends out a letter that says, "Hey, you didn't really do this right. You don't have to fix it on this report you can but you don't have to, but moving forward be aware of it". Now we had another meeting where more deficiencies because Enforcement indicated that they didn't think they were serious enough where we moved more deficiencies over into the training area. And now we've had a third meeting or a fourth meeting that's still this side has not signed off on yet because I'm a little concerned, we're moving more over. So we're taking all of these things that the statute says should be deemed deficiencies and we're making them training and we're telling these people, "Hey committee 1, 2, 3, 4 be aware of this. It's a training issue you don't have to fix it" and yet there's going to come a day where Enforcement has just indicated they're going to come over and they're going to look at the committee and they're going to look back and say, "Wow you didn't do this right, you didn't do this right, you didn't do this right, you didn't do this right, you got all these training letters but you didn't fix your filings" because we told them that they didn't have to but they could be perceived then as bad actor which I don't necessarily fare is a just outcome.

**Douglas Kellner:** I agree with you.

**Kim Galvin:** So I'm stuck now because we keep moving things over but if you're going to do the whole look back as a statute suggest and as Ms. Sugarman has indicated, it does no service to the people that are getting letters that says, "Don't fix it" and then they don't fix it but then from a hearing officer perspective, if I were the hearing officer and I wasn't fully familiar with everything, I would say, "You got 7 letters. Maybe it was a house number, maybe it was a street



number, maybe it was an itemization, maybe it was this. Maybe it was a cash contribution but you didn't even bother to fix these and now you have one big one so"...

**Douglas Kellner:** But the key is you have to define it. So how did we get to this point? Prior to the 2014 legislation basically the policy was that if you filed a piece of toilet paper you would not be prosecuted and the good government groups all complained that there were too many poor filings...

**Kim Galvin:** we used to get hit with those reports all the time.

**Douglas Kellner:** weren't meeting the purpose of the disclosures so they got the legislature to change the law to add penalties for deficiencies and to require that the State Board audit every single filing to make sure it was compliant. And then got the appropriation to match it so that there would be funding to do that.

**Kim Galvin:** Right

**Douglas Kellner:** Alright so now we have the Compliance Unit has made several thousand referrals of deficiencies to Enforcement and my understanding is that so far Enforcement has actually started enforcement proceedings for only one of those 2,000 referrals. Am I correct on that number? Or is the one incorrect that the number is zero?

**Risa Sugarman:** I don't know what you mean by start, you mean going forward to a hearing officer?

**Douglas Kellner:** Or a referral for a criminal prosecution?

**Risa Sugarman:** Well Commissioner when I get a referral for deficiency, I don't automatically go to a hearing officer. If a case comes into my division, excuse me...

**Douglas Kellner:** How many have you done though?

**Risa Sugarman:** If a case comes into my division as a deficiency and it's assigned to one of either an auditor or an attorney or an investigator in my division, we pick up a telephone and call the committee and they come into compliance. The majority of the committees and again, when you talk about 1700 or 1200 matters that are referred, those are records that are referred. Those aren't committees that are referred. So if you're going to use the language you have to, excuse me...

**Douglas Kellner:** Of all the deficiencies who haven't complied, how many have actually had enforcement?

**Risa Sugarman:** I can't, I can tell you that...

**Douglas Kellner:** We agree that its hundreds of committees that are...

**Risa Sugarman:** Yes, there are about 500 committees of the 844 that we looked back because we looked back at the 1700 or I think it's the 1700 that Brian talked about, we looked back. The Compliance Unit looked back at all of those and reduced the number. Some had come into compliance and I would say most of them had come into compliance because of the outreach that my division had done by picking up a telephone and calling those committees and saying, "Let's work on these so that we can bring you into compliance". Now when the Compliance Unit talks about a training, that's a letter, that's not an outreach. They're proactive conduct is sending a training letter. Now this is actually the first time that I've heard that that letter says, "You don't have to fix that, you can if you want to but you don't have to fix that deficiency". Now it seems odd to me that a Compliance Unit would send out a letter telling a committee that they don't have to fix a deficiency.

**Kim Galvin:** Well it's not a deficiency, it's a created training unit that we created to help them learn how to do their filings correctly.

**Risa Sugarman:** But if they got that letter and we produce that, because if I have to go in front of a hearing officer, well wait a second if I have to go in front of a hearing officer, I would have to present that information to the hearing office. So yes, the hearing officer would know that the committee was told they didn't have to fix that deficiency by the Compliance Unit.

**Douglas Kellner:** There's no deficiency referral when there's a training letter, do you understand that?

**Risa Sugarman:** But it's still a deficiency under the statute.

**Douglas Kellner:** No its not. Its not that's the whole point. Alright I still get back to my fundamental question which is, of the uncured deficiencies how many have been referred to hearing officers or prosecution.

**Risa Sugarman:** I believe I'd have to look at my list. I believe I brought that list with me, I'm not sure. I think, let's see, 4 out of the 10 hearing officer cases have been referrals from Compliance.

**Douglas Kellner:** Yeah but those were all non-filers.

**Risa Sugarman:** No, I don't believe so.

**Bob Brehm:** That's what the file said.

**Douglas Kellner:** Okay so which ones were referred for deficiencies, let's name names?

**Risa Sugarman:** East Greenbush, Preserve, Ramapo Republicans for Change and Town of Wheatfield.

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**Douglas Kellner:** Those are all failure to file cases, every one of them.

**Bob Brehm:** They may also have deficiencies.

**Kim Galvin:** You can't have a deficiency if you don't have a filing.

**Bob Brehm:** Well somewhere else. You know they could have failed to file this one and had a deficiency on that one. I just think from a historical, if I could say one thing about this subject I try to leave it up to Compliance but when we started the statute change before the Enforcement, the statute changed the responsibility before the Enforcement Counsel came to us because the statute was effective 30 days after it was signed and the Enforcement Counsel started in September. So we predate her ability to give us her advice on how best to do this so we had to start somewhere before Risa came here. In those early transcripts of our meetings which are all public, we had to sit down and come up with what was her intake to us as to what she wants us to give her. So the statute said, "Shall" so without any other guidance, having just completed all of the reviews that led up to the policy being enacted that we had to do compliance reviews, we took "Shall" to mean everything until we get something better. So the Counsel's Office met with the staff. They made a list of what the statute required and they instructed the staff that based on this list if its missing it goes in this category, if it's a, "You gave me the right stuff but you put it on the wrong schedule" which is not in the statute but in our handbook, that turned into at least our training. Anything that required data they just put it on the wrong schedule which is different. They complied with the law, they didn't necessarily comply with our internal process. So that created that group. Once Risa came on board, they met and we kind of came up with, "What would you like us to give you" and that's what we do going forward because now we had her input. And we did and then there is continuing discussions on how best to refine that. Is it fair to send something which everybody is not something to send? So these meetings are helpful to fine tune what it is helpful to her, what is helpful to us to know so that we can make sure that our staff follows it and that all of our records jive in order to get everybody on the same page. Because that's what we want to do. But as Kim said, there is a moving kind of an issue as to what does the law require you to tell us? And our initial version was if the law required you to tell me the check number and the contribution and whatever, but the law doesn't say to put it on schedule B or C or whatever those numbers are, well that was a training item. But now it's moved as Kim has said because things that are missing check number if there's only one of them or three of them or missing a zip code is that a deficiency or is that a training? So that's where they were trying to prioritize based on the resources, what do you want? Do you want them all or not? So that's where I think there's been helpful discussions to figure that out so we can go back and adjust the list and go forward. But somehow there's this gap of people in the middle. And one statement that was said a little while ago that I really want to correct was, we were not able to do the enforcement side of it with the resources we had leading up to September of 2014 but we were able to send out of the 5 day letter and get the judgment. And once we got the judgment it was so-so as to whether or not in some instances they would pay the judgment, would they give us the report but that was different. But when you looked at who should have filed. Who got the 5 day letter and by the time the judge signed the order and we served the order on everyone, about 75% of those people who filed to file, filed. Once you got the

judgment the percentage was poor. Because we had no way of doing any follow up with anyone to enforce the judgment.

**Kim Galvin:** The 5 day letter was a big trigger.

**Bob Brehm:** So between the 5 day letter and the threat that X number of days later we would go and get a judgment and we would serve the judgment on your and there would be a financial penalty, 75% of the people filed. As Commissioner Kellner had said the quality of that filing was questionable. So since the Compliance Unit came into effect in June of 2014, it has received over 63,000 compliance reports, that's whatever you should have given us that's what we received. If we sent you a deficiency letter and you had to fix it, that's another report. So it's fewer numbers of committees. If you are a repeat offender you're on there many times. But of those 63,000 I think the Unit has completed review of over 83% of those and that number keeps changing because those 2 big cycle reports where everybody has to report really dumps an awful lot on them that they can catch up with in like February when we don't have more. So we have completed about 57,000 reviews of reports. Now that is a use of resources that were never available to us before that day so we have that resource now. We do that on an ongoing basis. I think it has a beneficial effect to committees to do things right. There is a source of people that can help them to answer their questions to do it right the first time but it also has increased the quality of the reports that are available on the website for the public to review which was our overall goal in the first place. So, what we have to work out is how best to give the information out there that I know they've been meeting on to come up with a list. But Kim's concern about the look back, now I've learned enough in Campaign Finance to never be a treasurer myself or would I recommend this to any of my friends, I wouldn't even recommend this to my enemies because there are so many things you have to be like a forensic accountant to get it right. But it's unfair to us to answer questions to people if we can't at least tell them what the perimeters are, what is the risk to them. Because they do call us and say, "Should I fix this" and it's like well we said no but oh my god with that threat, if that's an eventual, you might want to be smart and do it. So we should fix the policy so it's uniform. Because while we didn't have the resources to do much more we did try to have a uniform policy and we applied it whether you were the king or the prince across the board and we need to get back towards what is the uniform policy so it isn't questioning and our policy before was to do this uniformly unless somebody complained and then we followed up. So what would be the policy to know that the complaint that is before you isn't selective enforcement which is really against the whole agency?

**Peter Kosinski:** Did you have something you wanted to add or are you?

**Brian Quail:** Yes, I do actually, thank you Commissioner I appreciate that. I will be brief. Since roughly a short time into the creation of the Compliance Unit and Enforcement contract that we currently have, the training vs. deficiency distinction was there administratively. The statute does refer very specifically to, if such statements, referring of course to the filing that made by the committee, if such statements are found to be deficient, the Compliance Unit shall notify, and then obviously the failure to fix requires the referral ultimately. So it really does come down to what is a deficient statement as opposed to I mean the statute does not say if the statement is missing anything that it absolutely must be referred. In defining the word deficiency

I think the framers of the statute intended that we not burden people who have made a very small error or very slight omission. That doesn't in anyway impair ultimate disclosure. And so I think that's sort of common sense construct that we've tried to apply. And the training letter that does go out does indicate to people that they should make an amendment to fix the matter. It's just that it is not something that is followed up and there's not an implicit threat associated with that notification to the committee.

**Andy Spano:** What if they make that same error over and over again?

**Brian Quail:** On some of the things that are a training issue, there are look backs in the formulary so that if you do the same thing over again, that certain conduct can in fact become and elevate to a deficiency.

**Kim Galvin:** Yeah, we're trying very hard and it's very difficult to keep the same reviewer with the same committee so you become familiar with who it is and you kind of know and you can look back and see even remember or you don't you've had contact with these people, but it's hard to do but we're trying to do that.

**Brian Quail:** And that exact issue is something that the case management tool I think is the best word for it is actually designed to help catch so that when the reviewer gets it they can see what they need to be looking for with those kinds of issues.

**Andy Spano:** I filled out a lot of these forms well I've had someone fill out a lot of these forms, and when you have a large organization doing this and you have a lot of money coming in...

**Kim Galvin:** They're much better.

**Andy Spano:** and you have 3 people in front of you looking at this thing before you send it, you still make a mistake okay. Minor mistake. Address or whatever. And you've got to put someone on the phone to get the address it's really a big deal, these little errors are a big deal. But if I want to hide something and with this kind of letter, I can make a minor mistake on a major issue, someone is going to contribute to me once, a name that's sort of unfamiliar and I don't put an address down. You'll never see it again you told me I don't have to put the address down so I'm clean unless someone wants to pursue it. Where if there's a deficiency and we follow up on it, it's a different story.

**Risa Sugarman:** Yeah, but a situation like that in a big committee somebody who makes a big contribution would be a red light for my.

**Gregory Peterson:** Yeah somebody give you \$100 with no address that's one thing, if somebody gives you \$10,000 with no address I'm sure they'd look at that.

(Everyone laughing)

**Risa Sugarman:** I mean that would be like Whoa, I want to see where that address, that's a Google search.

**Kim Galvin:** You see how it's murky, I don't like murk.

**Douglas Kellner:** I think that the Enforcement Counsel should have a very significant role in defining what is deficiency and what is training.

**Kim Galvin:** I agree.

**Risa Sugarman:** And we've done that Commissioner, we've done that.

**Douglas Kellner:** I understand. My point is that the statute though does mandate that the deficiency letter go out and mandates the referral to Enforcement of people who have not complied with deficiency notices. So obviously if you don't think it's significant enough to warrant further enforcement activity, then maybe it should be moved from deficiency into training. My point is, is that I'm very troubled by discretionary prosecution. In other words, where the rules are not clear on what the priorities are because there's always this suggestion then that the few people picked out for prosecution are being targeted and if there are standards on who gets prosecuted and who is put into the hold pile, then I'm much more comfortable with that. But when you have a couple of thousand of referrals for deficiencies and only even if its 4 are subject to action before a hearing officer or a referral to a DA, then we're better off than we were ignoring it.

**Risa Sugarman:** But that doesn't take into account Commissioner the efforts that are made by the members of my division to bring people into compliance.

**Douglas Kellner:** Which is good but what happens when they don't come into compliance?

**Risa Sugarman:** And that's the step that's taken afterward. But there are, first of all we've only had hearing officers for a year for one year so we've had 9 cases filed that have been that have resulted in I think one case went to, and perhaps 2 more are going to be filed in Supreme Court, the rest have been settled for penalties. I just think that this is a process that has a procedure, it has...

**Douglas Kellner:** Yeah but we're talking about at least many hundreds if not thousands of committees where...

**Risa Sugarman:** Not thousands, its not thousands.

**Douglas Kellner:** Where nothing happens. Where there's no meaningful follow up sanction. Well that's my concern. But there's one other thing I want to say before I finish this topic which is that I dissociate myself from your remarks about warning people to be treasurers. I think you're wrong and that that's a mistake. I spend a lot of my time meeting with people and trying to recruit them to be treasurers and I believe that Risa agrees with me that the goal here is not to

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make life impossible for treasurers, the goal is to have public disclosure and the goal is to help people come into compliance. And the facts absolutely bear that out because in fact most of what we're complaining about is the opposite that too little is happening for the very small minority of people who thumb their noses at the process and does not file at all or ignore deficiencies.

**Risa Sugarman:** And I would agree with that and I just wanted to say if we're talking about statistics that even of the number of committees, the 500 and 30 some odd committees that have been referred 70% of those referrals, 70% only have one deficiency attached to them. So the numbers of violations that we're looking at even on those referrals are small and that's why we take and make the effort of bringing the personal outreach to those committees to try and get those committees into compliance before any further action is taken.

**Douglas Kellner:** Let me just finish my remark which is that a Campaign Treasurer is performing a public service. We want people to run for office that's a core part of our democracy is to give voters a choice. We want disclosure and transparency in Campaign Finance and it is our mission to help people be treasurers and to assist them. And in fact that is what the Compliance Unit does, that's the purpose. The training letter is to get them to comply. But I certainly hope that you'll reflect on your remarks about warning people against being treasurers because we need treasurers and they perform a valuable public service even when their candidate loses.

**Gregory Peterson:** I agree with you 100% Doug and emphatically so because its very, very difficult for any treasurer, as a matter of fact its very difficult I think for any campaign committee to submit something that doesn't have at least a couple errors, that's the way it goes. And sometimes tracking those things down whether it be an address or something else, when people make a contribution, they make a contribution, here's your \$100, here's your \$50, here's your \$1000 whatever it is, they send it out, that's it. They don't want to be bothered. Then you try to track them down, excuse me this is your business address I need your home address. Oh for god's sake and that goes back and forth. Meanwhile they still have to, they're not in compliance here. And I remember when I first came here, one of the things that Bill said, "Hey we're here to help. We're here to guide you". So unless somebody is really thumbing their nose at the process and at the law and at this Board, we're here to help you and if you have something you want, we'll teach you how. I'll never forget on my own committee years ago we sent something and I kept getting something bouncing back. I said, what happened? Those were the days when if you didn't have your, I don't even remember it was a CD, it wasn't the right thing and it was sent here it got bounced back and there was no explanation. I'm like, "What the hell is this"? Until we finally coordinated things so it's fine when we sent the software in it was accepted and so forth. So there's a lot of hurdles to overcome for any treasurer that's in charge of this, we should make their lives easy. Now, that being said, of course, if somebody is going to thumb their nose at us that's something else. But if a poor treasurer who has a large committee like Andy's, with a lot of money has a large committee there are a lot of things to check. And if that guy or person on each time they file 4 times a year there are mistakes each time so he's got 4 times a year that he's submitted something that's insufficient. Oh my god, so if it comes some day along the line where he has to, there's something that's really wrong they have to come

before a hearing officer, they say, “Wait a second you had all these other things”, “Yeah but that was just an address” that’s what I think the thing Kim had brought up we don’t want that being held against the poor treasurer when it’s something that’s innocent. So somewhere along the line there has to be not only philosophically but something that’s a little more solid than that that people understand that no, you’re not going to get penalized for trying to cooperate. You’re not going to get penalized for doing the right thing. You’re not going to get penalized for making the corrections. And that you’re not going to get penalized if you make some stupid mistakes it’s as simple that as. However for the people that don’t comply, that thumb their nose at us, I have no sympathy whatsoever. Do whatever the hell you have to do. Now the question is, there’s a lot of gray in what I said so that’s got to be narrowed down so that we have a little more of a definition as to what we’re going to do going forward so that when somebody asks those questions, they will know definitively, yes, don’t worry about it, this is okay, don’t step over here. And I think if you guys are working that out, Brian and Kim and Risa then fine. But I think you should understand I’m just stating what we feel, this is the philosophy of this Board and unless you disagree with that, I’d like to hear right now, I think you should proceed along those lines.

**Kim Galvin:** that is what I was worried about thank you.

**Bob Brehm:** That’s the same thing I was worried about.

**Peter Kosinski:** We’ve had a lot of discussion here today about the deficiency area and I think that is a point of concern and I think you’ve gotten the sense. But I would just like to go back a minute because the numbers that were reflected here really show that our bigger problem, at least numbers wise seems to be in the failure to file arena. I’m looking at the numbers there where I’m being told there’s almost 5,000 failure to files that have not come into this agency over the last 2 years as compared to 1,600 referrals of deficiencies. In my opinion the more egregious violation here are those that file nothing with this Board rather than those who file something and there happens to be a deficiency where there’s a lack of information provided. I’m much more troubled by our not pursuing more aggressively those committees or those candidates who file nothing here at all and there’s a very large number.

**Risa Sugarman:** Again, its 2,000, I don’t know the number but...

**Peter Kosinski:** Its 2,000 committees as I understand and 5,000 files well those are the numbers that were given to me and I’m going to rely on those. But from a priority standpoint, my feeling is that those should be the priority. Because if a committee files something even if its deficient it doesn’t give an address or various information, that’s less egregious to me than those committees that have done nothing and given us no filing whatsoever. Because I do agree with the basic philosophy that our goal here is not to penalize people, our goal here is to get filings into this agency so that the public has a right to know what these candidates and these committees are doing. And if we’re allowing people basically to file nothing here and there’s no consequences to that, that to me is a very, very bad message that we’re sending out to the community. So there’s two issues to me frankly; one is that’s a very bad message and I think right now this agency isn’t doing enough to pursue those committees and/or candidates who are filing nothing



with us to make sure they file with us. And secondly I'm concerned about 4 committees going to hearing when I'm finding there's 2,000 committees that have filed nothing. And what are the standards? Because I agree with the Commissioner that selective prosecution I believe is a very big concern in this arena. That we are not picking and choosing winners and losers here based on some arbitrary criterion. If you're telling me that you've got Assemblyman Boyland you mentioned with 28 failures to file?

**Risa Sugarman:** No, he was sued and had 28 judgments under the prior system.

**Peter Kosinski:** Okay but I'm sure within this 2,000 there are I'm guessing within this 2,000 I'm guessing there are some filers that are multiple repeat offenders that to me that should be the priority of pursuing those as opposed to a person who misses one filing or files something and its deficient and has been identified as such. So that to me is more troubling than we're arguing maybe over what constitutes a deficiency or doesn't and I agree that has to be settled, but I really think in the prioritization of this failures to file should be #1. So that's my input.

**Risa Sugarman:** And I know that and you've said that before.

**Peter Kosinski:** I know I have and I felt I wanted to say it again so that...

**Andy Spano:** And you said you're working on it and you'll eventually get there.

**Risa Sugarman:** Yes, and I've said that before. So we've done my report. So I think you can just pass over me when you get to me.

**John Conklin:** Can I ask a question just to a follow up of something Risa said earlier? You said that you were targeting failures to file for primary reports with a small...

**Risa Sugarman:** That's going to be the first e-mail, last e-mail that I'm doing.

**John Conklin:** Okay so...

**Risa Sugarman:** The primary, failure to file on the last primary.

**John Conklin:** So 2016?

**Risa Sugarman:** I really can't, I think its September but that will also include those filers who have prior failures to file. It will list all of their failures to file. I'm not sure I don't remember exactly if it was the 2016 primary but probably not because it was ready to go before September.

**John:** So then it's the September 2014 primary reports?

**Risa Sugarman:** I don't remember John I really don't remember.

**Gregory Peterson:** These are people that have not obviously filed at all correct?

**Risa Sugarman:** Well they haven't filed in a cycle in a 3 cycle of primaries and it would also include if they hadn't filed periodics as well, that would include those failures to file. So it will include all of those particular committee's failure to file. So it will be a 3 cycle plus whatever periodics they failed to file. It's a small targeted filing.

**Gregory Peterson:** I'll be looking forward to hear the results on that because that to me is failure to file go after them hammer and tong. You give them one chance, one last bite of the apple, its over.

**Bob Brehm:** One question still comes out and I know Risa shared the court decision that she obtained in the first hearing officer case from 2015 in that Judge Ryba had opined in her decision the difference between compelling a filing vs. obtaining the judgment because that was part of what was argued before her and she said the issue before her was collecting the money not the filing. But she harkened back to that young man who used to be our Deputy Counsel Paul Collins who said it was a 4-month look back to compel filing the report. She talked about it. It's unclear to me as a non-lawyer whether or not that really is the standard other than Paul Collins always said that's what he thought the standard was but in that case Judge Ryba did point to the 4-month statute of limitations perhaps on getting somebody to give us the report.

**Risa Sugarman:** I think it was the 4-months though after her decision and that's what she said.

**Bob Brehm:** I thought that was the statute of limitations but she didn't rule on it because that hearing was not compelled by only the reports which in that instance the person had voluntarily filed anyway so it wasn't an issue before Judge Ryba. But as a non-lawyer I still ask the question, what do we think the standard is? And if it really is 4 months from when it was due then perhaps most of the 4,995 are too late if you want to get the filing. If you want to get the judgment. Then again, I only ask the question and if we know the standard we at least know...

**Risa Sugarman:** And it doesn't preclude criminal prosecution.

**Bob Brehm:** Oh I agree. So if the goal is to get the filing, at some point if we all agree once we go over that threshold then the goal is out. There's always the goal to penalize the monies the penalty in order to penalize criminal but if the objective is the overarching public policy to make the information available so the public can see it...

**Peter Kosinski:** Well it's not just that Bob. I mean to be fair, if I get the filling after the election you've really thwarted the public anyway. So I mean the 4-months is the one issue but the other issue is if you don't immediate pursue these people and let's say its October and they're blowing you off and the election's in November and they file it in December, is it really helpful? No. I mean the election is over and it's interesting but it's no longer relevant to that election. So really the goal I think needs to bring them into compliance immediately or as soon as possible prior to the election preferably if you can do that so that again we further the public policy of making the public aware of this is what this candidate's raised and here's where the money's coming from. You know all those issues the Campaign Finance addresses. So I agree timeliness

is critical here because penalizing a guy 2 years later or even getting a filing 2 years later is of limited use.

**Andy Spano:** In any major campaign your opponent is going to be checking your filing and it's not there.

**Peter Kosinski:** And you're right and that has been used in some political campaigns as a way to criticize people you're right. But that does not relieve us of our responsibility as an agency to do that on behalf of the public.

**Andy Spano:** Send a copy of the letter to the opponent.

**Peter Kosinski:** Whatever. I'm not...

**John Conklin:** Well to that point Commissioner in the past what would happen in a campaign was a reporter would call the Public Information Office and ask if the offender had been sued for failing to file and we would be able to give them information about that and tell them how many times they may have been sued, what the fines were. Now they may or may not have been collected but at least that part of it was undertaken and publicly available and out in the public's view. Since September 2014 that's no longer available.

**Douglas Kellner:** That part but we do make public the referrals of non-filers and we do make public the referrals of deficient filers.

**Kim Galvin:** Nobody calls us anymore.

**Douglas Kellner:** That's a different issue.

**Bob Brehm:** Well they're public under statute. Anybody who can ask they ask.

**Peter Kosinski:** Is there anything else on this topic? You had some else you wanted to bring up on Counsel.

**Douglas Kellner:** On Counsel right. Okay I wanted to discuss briefly the Eason litigation. Eason is a lawsuit where disability advocates are suing the State Board of Elections and effectively the Department of Motor Vehicles for not complying with the American Disabilities. So I have been following the paperwork back and forth very carefully and I'm aware that the plaintiffs have recently amended their complaint to raise additional allegations primarily against DMV but some of the allegations are against the State Board in terms of the accessibility of our website. I want to make it clear my position is that we should be doing everything we can to bring our own website into compliance and that I think we should be trying to settle the case but I realize there are difficulties because of very shifting sands on part of the plaintiff's in terms of what they asked for. If you want to get into details, we could do that into Executive Session but I at least want to be on record that we should be in compliance and if budget issues are the reason that we're not into compliance then we should be negotiating towards a consent order and let the

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budget office deal with the budget issues. Does anyone want to briefly go into what the issues are with our website that they are raising and...

**Andy Spano:** Didn't we have this conversation at one time? Didn't we, weren't we down to one item and then...

**Kim Galvin:** Then they changed it.

**Brian Quail:** I mean I do think it is important. We're entering into the discovery stage and there are certainly legal standards issues involved so I'll keep it at a fairly high level and obviously any degree of detail the Commissioners want if they want to do it in public then tell us, you want to go there, if you want to do it in Executive Session certainly we'll do that. But...

**Douglas Kellner:** Anything that you think would compromise your ability to settle, we should do in Executive Session but the principle unless you feel differently is that I'm advocating anyways that we should be, that we are committed to full compliance with the American's with Disabilities Act and if there are issues where we're out of compliance then we should be promptly addressing them and if there are problems with why we can't address them, then that should be articulated so that we can address those problems and do what we have to do as an agency to get into compliance.

**Brian Quail:** I don't think anybody disagrees with that.

**Andy Spano:** Are there any issues that we have a disagreement on compliance?

**Brian Quail:** No.

**Douglas Kellner:** No? So why isn't it settled? Although I understand DMV has different issues and I'm not going to comment on their...

**Bill McCann:** Well there are dynamics I think if we're going to have a discussion needs to be done in Executive Session because it goes to strategy, it goes to any number of standards that apply. For instance, the plaintiff's believe that there is a certain standard that the law requires that we're not in agreement universally at the agency that that is the standard that's legally required so. There's a lot of nuances to it. So I think what you stated earlier that certainly the Board is fundamentally in agreement that we should be in compliance and our website should be accessible, the issue of whether it is or not and what the nuances as to what's standard applies that's the critical juncture and I don't think that should be a public discussion about that.

**Douglas Kellner:** Well we can end this for now and we'll raise that later. And it brings me to one other issue where we haven't been sued yet but where I think we should be sued which is noncompliance with the language requirements under section 203 of the Voting Rights Act and I keep raising this issue over and over again privately but I'm not getting any positive response from the people who's job it is to bring the agency into compliance. We are required to provide all election materials in the covered languages and the covered languages include Spanish,

Chinese, Korean and Asian-Indian which the New York City Board defines as Hindu. The New York City Board also does Bengali, I'm sorry. And the New York City Board also now is providing Russian and links to their web pages in other languages as well. And I'm very frustrated that we are not getting movements in terms of what we have to do to put our web pages in the required languages. No comment from anyone.

**Todd Valentine:** I didn't know anybody had asked about that but...

**Douglas Kellner:** I sent you a couple of e-mails Todd specifically on the budget letter to add that it be included as a budget priority.

**Bob Brehm:** we included in the budget the response to the Eason case to help with because we thought one person who does our web is still acting also as the acting project manager for the CAPAS-FIDAS because while the position had been approved and we were recruiting it just was more than we thought that person could handle simultaneously in the timeframe that we probably have to respond. So we did identify in the budget side letter language and the readability compliance requirement that we had. So we did identify that in our budget side letter. I'm just you know our success in getting some of that money won't be until the next fiscal year at the beginning for whatever we have to do.

**Peter Kosinski:** Do we have a legal opinion on whether we have to be compliant with the language requirements of the Public Voting Rights Act?

**Todd Valentine:** Well looking backwards we're under, under section 203 the State is not a covered entity. It's always been the counties and that has been since time immemorial, so we've provided those materials to the counties that require those additional language in the additional languages so the voter registration form is available in multi languages. Or we've coordinated with the counties, New York City specifically when they're the only one covered entity where we've worked out who provides that line in the translation. So we provided those materials consistently in the past. We make translations of the ballot props when it's unavailable but as the state as an entity is not a covered jurisdiction for section 203, it never has been.

**Peter Kosinski:** So your position is all of the state websites should be compliant to 203?

**Douglas Kellner:** To the extent that they deal with voting materials.

**Peter Kosinski:** Not just the city Boards?

**Douglas Kellner:** Correct and that seems to be the policy in other states that have only partial coverage. So for example, Arizona and California I've specifically looked at their State websites and they provide the voting material portions of their websites...

**Peter Kosinski:** Well is there an opinion from the feds on this? I mean this is a federal requirement. Does the federal government have an opinion on the state's need to comply with section 203? Are we aware of any has the United State's government weighed in on this?

**Douglas Kellner:** I'm not prepared to say.

**Peter Kosinski:** Because I don't know the answer. I have to admit that I don't know the answer to this one. I know we've never done it but I don't know the answer. I'm just trying to understand. I mean to me it's a legal question.

(Everyone talking)

**Todd Valentine:** We've always provided the additional...

**Peter Kosinski:** No, I know that I'm just trying to understand the legal posture that the feds take on this because it's their statute to enforce and well...

**Douglas Kellner:** Alright I've raised the issue.

**Peter Kosinski:** Yeah, I don't know the answer either. I guess we need an answer to that.

**Andy Spano:** Ask them to get an opinion.

**Peter Kosinski:** Are you asking the staff to ask the feds?

**Brian Quail:** Yeah, I think it's something we can report back on at the next meeting. Also I think that to be very brief I think there's a question that's legal and there's also a question of should we anyway.

**Peter Kosinski:** Well I think the first question is legal Brian.

**Brian Quail:** And it is and that's the question as put and I will report back at the January meeting.

**Peter Kosinski:** We can all discuss things we think we ought to be doing but I think the first question is what do we have to be doing?

**Douglas Kellner:** The regulatory language is voting materials. I did circulate the regulations. Voting materials. So there's obviously a gray area as to what is voting materials. Obviously a ballot.

**Gregory Peterson:** There is no other country but America that would do this.

**Douglas Kellner:** that's not true, there are many countries that provide multiple languages including Germany which is very good at providing multiple languages.

**Peter Kosinski:** Well I guess we should get an answer to the legal question and then we could kind of go from there.

**Kim Galvin:** Could someone re-circulate the e-mail, was I on the e-mail cause I don't remember it?

**Brian Quail:** I'll re-circulate it.

**Gregory Peterson:** We're still on unit reports.

**Peter Kosinski:** Okay next is the unit of Anna Svizzero Election Operations.

**Anna Svizzero:** We're going to make it short and sweet. We do have a written report we just didn't get it into the packet soon enough. We do want to commend our staff for culminating an entire year's worth of aggravation into what you all just signed a couple of hours ago.

**Bill McCann:** That aggregation right?

**Anna Svizzero:** Yes, excuse me, well yes that's what I meant Bill thank you. We did respond to thousands of phone calls and inquires before the election, on Election Day, after the election. I don't know that we made everybody happy. We even had people calling us last weekend saying they wanted their votes taken out of ballot boxes and changed, they had changed their minds. I suggested we couldn't do that and I was told since we put people on moon we ought to be able to let people change their minds. That was probably the highlight of all of those thousands of phone calls that we had it kind of put the frosting on the cake there. But I think our staff did yeoman's work, every phone line was ringing. Every phone line was answered. And we are very proud of them and the time they put in to get all this done. We worked with the county boards in pre-election tasks building ballots, etc. through the audits and post election tasks. Nothing of any great consequence. No huge hurdles were encountered it was just county boards dealing with probably the biggest issue was the Libertarian candidate who had a different set of electors for his appearance on the, what was it the reform party? Libertarian and

**Bob Brehm:** Independent.

**Anna Svizzero:** Independent. They had different electors so that his votes could not be aggregated for president. So Boards had to, even though it was the same candidate, same name, they're used to aggregating them and they get one vote total with this person, Mr. Johnson that couldn't happen. So we worked with Boards to finesse that and that was probably the biggest hurdle that we had to help them out with. Other than that, I think our report speaks for itself. Brendon did you want to add anything?

**Brendon:** The one thing I know we talked about but I just also want to thank the county boards. We did have a lot of back and forth between them getting the results, aggregating the results and everything else so they were always very helpful and I do want to just mention a special thanks to all the work that they put in because there was lot of paper that they had to open and its all the behind the scenes work that nobody really sees.

**Peter Kosinski:** Okay any questions.

**Douglas Kellner:** One quick thing. Commissioner Kosinski referred before to the fact that our regulations require that the voting system itself be separated from the counties computer system and so specifically the regulation says that the computers that are used for programming the portable memory devices that provide for the ballot setup on the scanners have to be isolated and cannot be hooked into any other network. What are the procedures that we have to make sure the counties are complying with that? That they are not doing ballot programming with devices that are hooked into other systems?

**Anna Svizzero:** When we do our physical audits we have staff review that. These are stand alone systems. When the county boards purchased it we made sure that that's exactly what they were buying and what they were setting up. When we did installations and acceptance testing we participated in some of that but certainly in the audits, physical audits of any asset purchased with federal dollars moving forward we can have our staff, they do meet now with technicians and review the operations and security practices that are in place. We can certainly add that to a check list for further validation but these are separate computers and separate places and I couldn't...

**Kim Galvin:** When I was in your unit Anna as your Deputy, I believe we actually made the vendors disable the Internet ports didn't we?

**Anna Svizzero:** To the computers?

**Kim Galvin:** To the machines themselves.

**Anna Svizzero:** Machines can't have that, right. He talking about the computer.

**Kim Galvin:** Right you can't talk to the machine if the machine has a disabled Internet port right?

**Anna Svizzero:** Right that's true.

**Douglas Kellner:** Our regulations says that the computer you use to build the ballot which programs the portable memory device cannot be linked to the Internet or to the county system which I think is a very good rule. I just want to make sure that over time that that rule is being enforced and that its part of our procedures.

**Anna Svizzero:** We can make sure it's on our check list. We can check that as soon as we get back and make that change immediately if its not there.

**Peter Kosinski:** Okay any other questions for Anna? Thank you very much. Next is the NVRA PIO, John Conklin.



**John Conklin:** Thank you Commissioner. Like all the other units have described PIO is extremely busy leading up to the election. We didn't keep account but I agree its got to be in the thousands of calls and inquiries from voters and the press on the general election, cyber security of the elections, the electoral college, campaign finance filings, but also things like status of my absentee ballot, am I registered and things like that so we dealt with many, many of those issues and I echo my colleagues compliments to the county board personnel who we interacted with a lot to get information about all that stuff. In addition we had 48 international observers from 15 countries in the State on Election Day. They visited New York City, Nassau County, Albany County and Erie County. We also did 62 FOIL requests in September, 33 in October and 88 in November. Tom and I participated in all the Election Night discussions that we had leading up to the election just the routine operation of the website for that and then when all the issues around cyber security broke, all the things we needed to do to make sure that that portion of the website remains secure and if it wasn't what backup contingencies we could put in place. We also did the monthly ECA calls in October and November. The cyber security meetings and the unit contributed to the testimony that Bob and Todd and William Cross provided to the Assembly Election Law Committee last week and also we participated in the meeting that Bob already mentioned with the MB post election.

On the website we posted the election night results. We did the general election candidate list. We posted the approved list of presidential write-in candidates which ended up being 32 in total this year. The annual report went up. We posted the updates for the Winding Down the Campaign materials and we posted the webcast and transcripts for the 13<sup>th</sup> and 17<sup>th</sup> October meetings. Lastly, in the NVRA unit Greg conducted his annual training in New York City, he had 112 people attend from 12 state and local agencies.

**Peter Kosinski:** Okay thank you John are there questions?

**Douglas Kellner:** You posted lots of good stuff and so my comment is overall positive but there's still things on the home page of the web that are out of date and that I would urge you to review so that not only do you post things but that we continue to review it from time to time on what should be deposited so that it doesn't clutter the home page.

**John Conklin:** Thank you Commissioner.

**Douglas Kellner:** Well thank you.

**Peter Kosinski:** Anything else for John? Then we will move on to William Cross of ITU and I know we've already heard quite a bit so.

**William Cross:** Yeah we covered at the top of the meeting, most of our focus this period since the last meeting has been cyber security we've been consumed by it to make sure we were covered. We put a lot of things in place, short-term protection some of them temporary utilizing partner resources but part of going through that process has been identifying what we need to do long-term and we've actually started on some of that work already post election for logging solutions and things like that Todd indicated. But a lot of that work will require additional

resources to do it right. Security isn't a one stop you know set it and forget it kind of thing, as I mentioned previously threats evolve all the time even building up to the election, we were pretty much focused on what the FBI alerts were and specific information they provided. And then a week or thereabouts just before the election was a whole different type of attack that really got national attention the dime and denial service. So we did scramble to make sure that we had protections in place for that including bring in Google and their product Shield essentially 3 business days before the election and got that implemented. And they sent someone on-site to help us do it. So all that work did pay off and that we had no issues from a cyber security standpoint for the election. We took a lot of traffic in over that time, much more than I heard DMV mention previously about their issues with load. Over the 2-day period, the day before and the day of the election, bless you, voter look up alone had over 3,000,000 hits on it. At one point peaking at simultaneous 48,000 active users in an hour so we took a significant amount of traffic with almost no issues. Our infrastructure, as Todd mentioned, is aging. We have a project in place that was actually kicked off this period also for the next voter refresh that will build out a whole new infrastructure to address as part of some of these long-term solutions. The Board had previously bought a certain amount, several products that are security related that weren't implemented and the contractor we have just kicked off part of the scope of that is to implement these pieces for our own security capability going forward. That team the vendor team for the NYSVoter Refresh is now on-site they're doing an assessment of all our networks, our servers and our cyber security. We expect to have recommendations from that to which we'll go into a planning phase of what we can implement setting up priorities to those and then an implementation plan. That's currently schedule to go through about mid-summer. The Legislative hearing was mentioned. I think we reiterated the long term, the short-term actions we took in the long-term pieces and that for projects. CAPAS-FIDAS we do now have a Contract Project Manager on site from NYSTEC who will be overseeing several projects, not just CAPAS-FIDAS. We are looking, we're still seeking to fill a dedicated project manager for that. We've done a lot of interviews, we've been going back and forth. There are several items on that we're still looking to fill from Developers, to Project Managers to Testers and we're going through the state process to do that. It's a long tedious process. However, the one Project Manager we do have onsite now from NYSTEC has really dove into reviewing past project schedules. The current status of each of the modules where they're at and where the gaps are that we need to address either with resources or building up for the requirements for them. We are ready. One of the items from the last meeting as you indicated desire to see a demonstration of what we have. We've prepared a demonstration at least in conceptual design, screen mockups, come of the things we mentioned searching and filtering and things like that. We'd like to present and get your feedback before going further into development on that.

**Peter Kosinski:** I think we're hoping to do that next week.

**William Cross:** Right I believe that's schedule for Friday next week. Behind the scenes we're continuing to work on database migration which is much of what's in the system would be dependent on. We had a long-term issue with duplicate records coming over and that's been addressed. That's been outstanding for a very long time so that's, that's a lot of progress from our standpoint to overcome that one. The case management which was also mentioned previously is now out of testing and being ready for production to replace the antiquated

spreadsheets and stuff that are currently being used. Beginning next week put that into production. And that's what I've got.

**Douglas Kellner:** What's the current schedule for the CAPAS-FIDAS switchover?

**William Cross:** The current schedule has not been modified from the original. However, however, let me footnote it.

**Douglas Kellner:** But we're not on it?

**William Cross:** We are not on it, we are drastically not on it. That was based on a lot of resources that weren't real at the time, haven't materialized since and a lot of assumption and footnotes. It was optimistic at best. What we're trying to do is since that time restructure the project in certain modules. Each one is being addressed as a separate work stream. That schedule is now being modified to reflect that. We've since put together a grade of where we're at, at each of these pieces as a health check. As soon as we can get some of these resources in the door, particularly the developer resources that we're going through the motions for right now, we can start assigning and coming up with estimates.

**Douglas Kellner:** Is the candid answer that we're stalled right now?

**William Cross:** No there is progress going on. It's not stalled at all but it's not full steam ahead either without, without the resources.

**Bob Brehm:** It's not the best answers. We were stalled June, July until we had an agreement with the meeting between the State IT, the Division of Budget and our conversations with the Deputy Secretary that Todd and I had to try and get the resources. They, by around mid-August, early September, those resources confirmed that we can fill these temporary positions. So, since September, October, November in addition to all the other work, William's Team and others had succeeded in getting a large number of interviews completed. We have offered many of the positions to people that we thought were qualified and they have turned us down to take jobs elsewhere. So, we have continued to bring in the resources. So, we have, so...

**Douglas Kellner:** I hear stalled.

**Bob Brehm:** Well stalled because we weren't getting the approvals to fill the jobs that are needed to get them down. So, we're farther along than...

**Douglas Kellner:** So now I hear that you're ...

**Bob Brehm:** not.

**Douglas Kellner:** was told but you're not moving because you still have personnel they can see and so...

**Bob Brehm:** We're not moving, we are moving better than we were in August but we are not moving with the strength or speed that we would like. But now that we don't have the election interfering or taking up his time, we're making I mean it's not for a lack of trying.

**Douglas Kellner:** I'm not accusing you of not trying and I'm not trying to cast blame on anybody.

**Bob Brehm:** Well we don't have enough resources to...

**Todd Valentine:** Yeah but for example something that's moved forward on is what they're talking about what's the case management system. That's why the mod, you know when we talk about the modules is well we knew we could move forward on certain modules so that's why we weren't completely stalled. So, they could move forward on Case Management. That's a module we can move forward on. We could move forward on infrastructure and disaster recovery sites on our off sites which is also part of the CAPAS, you know in support of the CAPAS-FIDAS Project. So there are elements we could do. What we couldn't do is that is, is you know the final design you know finishing the design which goes towards the review that we'd like you to see on the interface because that's the public side of the interface. But we've also been working on developing the business rules for from the Compliance Unit so we think that we've got a good handle on that. It's when the developers do get on site or all of them on site, they'll have a clear path on which they can then do development. It's not going, it's certainly not going in the way we had planned it and then a lot of that was as you said wasn't really due to our own doing. You know we got undermined in a number of ways but that you know, large projects that happens to.

**Douglas Kellner:** Alright the last report to the Commissioners as I understand it was that we were going to start to see data testing for the filings to be made in 2017.

**Peter Kosinski:** July, I think, I think the July Report was our latest target. That's no longer I assume doable. So, we're into '18 now. Is that fair to say?

**Todd Valentine:** Uh, well we're not, if you're just going linearly yes.

**Peter Kosinski:** January 18 would be the earliest possible one? Or is that even possible now?

**Todd Valentine:** I wouldn't say that's possible. But the critical thing on launching that is and you're shifting a large number of files, filers to a new filing system while you're keeping the old filing system running. So how we do that transition is also something we were targeting the '17 because we were hoping that that would be a year in which we could have a transition for local filers the end state filers. We also want to have that same consideration. We don't want to just drop it. We want to drop it when it's ready. We also want to drop it when we can do the transition so our plan to do the transition now has to be revised depending upon when it actually gets finished. So, if you're looking chronologically yeah '18 would be the obvious next choice but what we want to consider is at what point in the year is that a good time to start transitioning people to a new filing system and still keep the old one running. And again, that's another

module we did and that's where he talks about the discrepancies was the archiving of the existing files onto the new platform. So, um, yeah 18...

**William Cross:** One of these modules and it's up to, to back to go on top of that is, was also a training module and it helped this module to provide the support for the transition. And so, our staff can provide real time assistance as someone trying to use it on the other end which is a big deficiency with the current system. But that is a whole separate module that we have currently.

**Bob Brehm:** I think it's clear that we have a lot more work to do before we can give you a calendar that's reliable other than we know that we're not going to make the old calendar. And it would be hard for us to give you a new calendar with what we know now.

**William Cross:** I'll just say since my arrival in late August it has not been stalled. There has been a lot of work and a lot of effort into filling these resources and some very frustrating effort. At the same time though moving what we can move and keeping that forward and keeping some momentum. So, it's not, has not been stalled at all. Is it moving at the pace everybody would like?

**Peter Kosinski:** Any other, anything else?

**William Cross:** No.

**Peter Kosinski:** Any other questions? Okay thanks for that. Uh, last unit is Risa Sugarman. I know we've had a lot of discussion, anything else? Um, I'd like to raise one thing. We have had a discussion a couple of meetings ago about a referral that we asked you to look into and that was the Commissioner Schulkin comments that were made. And I know you did some looking because I saw the New York Post there apparently. And I'm wondering if there is anything to report back on that from you? Is there anything to report back as far as, is there anything?

**Risa Sugarman:** Well I know that, I know that it's a very important issue for the voters especially in New York City. So that what I can say and I hope that this is sufficient for you, um, Commissioner Schulkin is not going to put his name in for re-appointment. I also read that. I don't know that it was in the Post but in one of the New York City newspapers. He also in certain appearances either before the City Council, or at a Commissioner's Meeting disavowed his statements that were made during the course of the video tape that was released. During the course of what we have done so far, I can say that we have not discovered any evidence nor do we have any information or anything that would lead us to believe that there was anything in his public statements that would, that are to the contrary of his disavowal of his statements on that video tape. We have not seen anything that would be to the contrary. Anything that we're doing is still in it, in an investigatory so it would be confidential. But I can say that there's nothing that he said on the video tape that was disavowed by him in a public statement that would lead me to any view to the contrary of the disavowal. I don't know whether that, I mean I, it didn't come out right. Yeah it didn't come out right I know, I know it doesn't, I didn't...

**Gregory Peterson:** Well said.

**Risa Sugarman:** We didn't find anything to the contrary of when he said in public that he didn't have any information of the type of voter fraud that he was recorded saying at that party. Is that better? Did it come out better?

**Peter Kosinski:** You're following up?

**Risa Sugarman:** Yes, we are.

**Peter Kosinski:** Find, okay so we'll expect maybe more...

**Risa Sugarman:** I hope so. I mean it's still in a very confidential and investigatory state so that's what. But I did want, I wanted to report on that because I know that that was an important part of your concerns.

**Peter Kosinski:** Alright thank you for that.

**Risa Sugarman:** Yep.

**Peter Kosinski:** Anybody else have any questions? We're done with unit reports and we'll move on to old business. The first piece of old business is the discussion on documents policy and this goes to your unit again. I believe that this is the area that we had some issues with as far as how we would handle documents being transmitted to us by your unit. And I know there's been discussions going on between the staff here and your staff about how to resolve that. I know there are some disagreements and I'm not sure where we are frankly. I haven't seen anything new.

**Douglas Keller:** I think discussions are going back and forth.

**Chairman Kosinski:** They're still going on and still...

**Brian Quail:** Yes and I think that this issue obviously is very important and it's been carried over a few times. And I think we'll be in a much better place in January on this particular item.

**Peter Kosinski:** And in the interim we are continuing with our temporary intern policy of keeping the documents confidential if you prepare them here and then we'll see how that proceeds? Anything else on that? Alright then the next topic is a discussion of automated audits which I know we talked about at the last meeting and I believe Commissioner Kellner had a proposal that you had put forward in some rough.

**Douglas Kellner:** Well in circulating my proposal I've gotten a lot of comments on substantive issues from the Republican Staff that don't really address what I was trying to do so...

**Kim Galvin:** Although I was late to the party on this particular issue, we have talked about it quite a lot. So, those, those...

**Douglas Kellner:** Talk hasn't been communicated to me. All that I got was Todd's draft that basically rejected the manual component of...

**Kim Galvin:** Then I sent certain questions that we had.

**Bob Brehm:** The other day those came to you. I forwarded you the questions.

**Douglas Kellner:** Oh yes, the day before yesterday after I...

**Kim Galvin:** I said I was late to the issue, completely late to the issue.

**Douglas Kellner:** And one question was where did the numbers come from? Okay? And the numbers are completely negotiable as far as I'm concerned. The numbers were an extrapolation of those very complex formulas in the Stark Rinvest Reports that I circulated. And rather than put the complex formulas into the regulation where you'd have to have a college mathematics understanding in order to translate them, there's another alternative that I believe I circulated to the staff, the link to the Excel Spreadsheets that could be used for risk limiting audits but I'm not proposing a risk limiting audit. And that...

**Kim Galvin:** Well just so you know...

**Douglas Kellner:** and using those spreadsheets are complicated. But the numbers are negotiable. The numbers are a formula that I personally took from some of these theories and tried to simplify them by doing them as a step curve. And what I'm proposing is that if you're going to have an automated component of the audit, you still need to have a very small hand count to confirm that the automated component is doing what it's supposed to do.

**Kim Galvin:** And I'm appraising it a bit differently when I talked to people again, late to the issue, but um, when hand count, is it true, and I understanding it correctly that it's more of a comparison. You just look at the ballots and make sure they counted it correctly? It's not an independent count as much as a comparison.

**Douglas Kellner:** Correct well first of all it's not technically a count.

**Kim Galvin:** Right.

**Douglas Kellner:** You're counting for auditing purposes unless you escalate the audit to a hundred percent...

**Kim Galvin:** Right.

**Douglas Kellner:** it doesn't it's not a count.

**Kim Galvin:** But I think they can tell them I've had conversations and I think the issue is moving along.

**Douglas Kellner:** Good, great.

**Peter Kosinski:** Yeah, I mean I think, I think from my perspective...

**Kim Galvin:** It's not stalled.

**Peter Kosinski:** yeah, I think, I think the automated is a good way to go. I think any time we can reduce the amount of human intervention frankly it's helpful because I'm not a big proponent that human intervention is better than automated. Because I think humans make errors more often than machines frankly. So, I think if we can reduce the amount of human intervention that's an advantage. But I think if we're going to come up with the number, you know we're looking for some basis that this is the number that still has to be, you know the State Legislation come up with a three percent audit number...

**Douglas Kellner:** On principle just propose it...

**Peter Kosinski:** and no I don't have a proposal necessarily right here but I'm looking to come up with. If you're coming up with, you know where does that number come from and what is the justification for this particular number as opposed to some other number? And if we have to come up with a number on our own, you know well we'll try to do that. But I think that you know...

**Kim Galvin:** I think we can get there.

**Peter Kosinski:** Yeah, I think we can get there.

**Douglas Kellner:** My number comes from the chart on getting a 90 percent probability that if there were malfeasance that you, if the, I have to I apologize. It comes from a very rough approximation of getting a 90 percent probability that if the programming of the software that is being used for the automated check is that is independently programmed, would be...

**Kim Galvin:** Like a live test.deck. Kind of.

**Douglas Kellner:** Yes kind of it's not...

**Kim Galvin:** Break it down for the non-math yeah, I can't add yeah. But I think we're, I think we're making progress.

**Douglas Kellner:** And this is different from addressing the 3% formula. At the time 9-211 was written 3% was state of the art and the voting integrity community was basically comfortable with that as a good means of doing it although just at the beginning the mathematical literature from the math and computer people was coming out saying hey there's a more efficient way to



do it by doing what are now risk limiting audits. When our statute was developed, risk limiting audits were not really were in their infancy although the year after our statute, New Jersey put it into their statute. But New Jersey never implemented it because they don't have a voter verifiable paper audit trail because they're still using old DRE machines. So if I were writing this statute now I'd do it in terms of a risk limiting audit.

**Kim Galvin:** It did take a long time for Brian to teach me math so that I understood how many votes and it wasn't really that many and you know but like I said we were going to meet the other day. I think we will make progress on that. I do. I'm going to go right out there and say that.

**Andy Spano:** Now, now conceptually everybody seems to be on board in terms of a dual audit but the percentage of the manual...

**Kim Galvin:** Well and some other issues.

**Peter Kosinski:** Well and I think I think there's another issue...

**Douglas Kellner:** There's one other issue...

**Peter Kosinski:** Yeah there's two other issues for me.

**Kim Galvin:** Yeah.

**Peter Kosinski:** Two other issues. One is the independent nature of the automated audit. I know a lot of the counties you know to say to the county you now have to buy a separate device to do the automated audits I think is a burden on them. I don't know if there's a way that we can structure this so they can use their existing...

**Kim Galvin:** Central counts scan.

**Peter Kosinski:** central count scanners for example as they're audit piece. I know it's a concern about independents and I understand but I do think we should make an effort to try to let the counties use their existing hardware to do this rather than saying you've got to go buy a whole other device to do the independent audit. So, that's one issue. The second issue as you know is this issue that we've got with two of our municipalities who have taken it upon themselves to do a whole another way of auditing that I think is contrary to our state law. That we have a 3% audit procedure in this state which I think was reasoned out by the state legislature as opposed to other states that went with, for example, if the elections within a certain percentage you do a full audit that's the way some states went. That was their choice. Our choice was to go the 3% audit regardless of the closeness of the election. I think that was a legitimate way to go but now we've got two of our municipalities who have decided we're going to take it on ourselves to do a different kind of audit, New York City with the half a percent audit and I believe it's Columbia County with a hundred percent audit regardless. Every election they do a hand count. I just, I just don't think it serves the interest of our state to have individual counties deciding we're going

to go a different route than everybody else as far as how we count ballots in our county. I think everybody should be counting in the same way and there should be standard procedure which is outlined in the state law, in the state law and our procedures as far as what you do if the 3% audit doesn't work. You escalate to 5, you escalate to 10. There's an escalation clause, fine. But everybody should be following the same rules so that's my other issue which I know was somewhat separate but I think related to this whole auditing process that's being used in New York. So, I would like to talk about that as well as how we implement the automated audit system in New York.

**Douglas Kellner:** As to the uniformity I'm flexible on the uniformity but it's essential that if we adopt a uniform rule that it actually cover the problems. And the biggest problem is that under our audit regulation now, we do not catch those ballots that the machine counts properly in accordance with the instructions given the machine but are at variance from the requirements of the Election Law and 62.1015 in which define what is a valid method of counting the ballot.

**Peter Kosinski:** I'm sorry give me an example.

**Douglas Kellner:** There are two categories where a person has put an identifying mark on the ballot such as signing the ballot. That will not be caught by the scanner and so the scanner will count that ballot but in a hand count that ballot would be invalidated.

**Kim Galvin:** It shouldn't be though.

**Peter Kosinski:** But see here's the problem, here's the problem with that and let me just address that for a minute because I think that's a...

**Douglas Kellner:** Well you're interrupting me.

**Peter Kosinski:** I'm sorry but I interrupted you for a very good point. That issue I just want to raise it because that to me is one of the problems with these hand counts and one of the issues that's raised and I agree with you because you're right. When there's a paper ballot being counted, if you have an identifying mark that's invalidated for a very good reason because it's to avoid a voter from telegraphing to a candidate or someone else this is how I vote. So, the statute was created to prevent that and if you do that you're going to have your ballot thrown out so don't do that. That's good but you know if you count it, but if you do that on a paper ballot that goes through a machine nobody's ever going to see it. So, who cares? You can write your name all over it, nobody's ever going to see it, nobody's going to know how you voted unless you do a hand count. That's the very problem to me with creating these new hand say, say Columbia County...

**Douglas Kellner:** So you don't agree with the law that says that that ballot is invalid?

**Peter Kosinski:** No I well I agree with the law.

**Douglas Kellner:** So let's change the law. Alright now...

**Peter Kosinski:** Well but if you don't look at the ballot what's the point.

**Douglas Kellner:** See you just took the floor away from me but...

**Peter Kosinski:** You had a second point.

**Douglas Kellner:** Yes, my second point is...

**Gregory Peterson:** I think he should finish his first point.

**Douglas Kellner:** Is that there are ballots that are marked outside the voting target area which under our regulations if the voter intent can still be determined from the ballot, then the ballot is counted.

**Kim Galvin:** Yeah that shouldn't be bad.

**Douglas Kellner:** And there have been two contests now in New York State where the hand count of the ballots in close races has actually changed the outcome because of those ballots that were not counted by the machine in accordance with the statute. So, that's a problem. Now if you want to change the statute on what the rules are for ballots, that's one thing. But to have a system where in very close elections the discrepancy between the machine count and the hand count actually determines the outcome of the election I can't go along with that.

**Peter Kosinski:** But I don't think that the process of pulling the ballots out of the machine and looking at them and discovering oh you know Joe Smith wrote his name on this so we're going to have to throw it out now even though the machine counted it. And we wouldn't have known Joe Smith wrote his name on this but for the fact that we at Columbia County have decided to cut to pull every ballot out and count it. Now Joe Smith is disenfranchised for no good reason because but for your pulling that out of the machine, there was no harm that Joe Smith wrote his name on it. Nobody knows that Joe Smith wrote his name on it or how Joe Smith voted until you as a county decide hey let's open up all our machines and look at our ballots. Now Joe Smith becomes disenfranchised because of a county decision which I don't think is compliant with state law. So, I understand the state's statute requires you to throw that ballot out once you see it but it begs the question, why did you see it in the first place?

**Kim Galvin:** Well I think that's...

**Andy Spano:** Maybe if you go to a 3% count that could come up.

**Peter Kosinski:** Could come up. I agree with you. But that doesn't mean that the machine's malfunctioning.

**Andy Spano:** That's correct.

**Peter Kosinski:** Which is what the 3% count is supposed to be determining not that a ballot got counted that shouldn't have because state law. It was supposed to be decide, you know figuring out is that machine properly counting.

**Kim Galvin:** Because that's the difference between a count and an audit. The audit, the 3% audit and lovely me, that was like my first chore when I was here with Bob Brehm was you are supposed to view the ballot as through the machine's eye.

**Peter Kosinski:** If the machine is running properly.

**Kim Galvin:** Right you're supposed to disregard Joe Smith's name and see if that oval was correctly monitored by the machine versus a count which then...

**Douglas Kellner:** No now wait you said, you said did the machine properly count and the machine has not properly counted if it has not followed the statute.

**Kim Galvin:** No because it's, it's not a count it's an audit.

**Douglas Kellner:** What Kim is saying is different from properly counting.

**Peter Kosinski:** No that's not true. Douglas that's not true, that's not true. You know better than that. To say that the machine improperly counted the ballot because the openings properly...

**Douglas Kellner:** our machines are not capable of perfectly interpreting every ballot.

**Peter Kosinski:** But there's no point.

**Douglas Kellner:** and we don't require that for the audit.

**Peter Kosinski:** There is no point to pulling the guys vote out who wrote his name on the ballot.

**Kim Galvin:** I withdraw my statement that we were close.

**Brian Quail:** If I could just be heard very briefly. There's a, there's an enfranchising element which I think is more significant than the potential disenfranchising element as the Commissioner had mentioned. For example, in 62.10159 it says any ballot which has a mark that is clearly next to either, before or after a candidate's name or across the name shall be recognized as a mark and shall be counted as a vote for the candidate of question. So, mark there is no doubt, no doubt that a machine can miss that vote...

**Kim Galvin:** No that's true.

**Brian Quail:** which, according to regulation would be a valid vote. So it's not, it's not just the disenfranchising thing it's compliance with what the law is and clearly that's a vote that should be counted.

**Kim Galvin:** Well then, all those people are being disenfranchised in 90% of the state...

**Brian Quail:** Well the point to remember...

**Kim Galvin:** because they're following our regulations.

**Douglas Kellner:** Well that's right.

**Kim Galvin:** We should change that.

**Brian Quail:** The percentage...

**Douglas Kellner:** No we should change the procedures to make sure they're not being disenfranchised.

**Kim Galvin:** But I don't think the machines are capable of reading outside the card area.

**Peter Kosinski:** Without pulling every ballot of every machine how would you, how would you see all those?

**Douglas Kellner:** By having a hand count in close elections but we should have a uniform, we should have a uniform statewide rule to require a hundred percent hand count in very close elections where the hand count could affect the outcome.

**Peter Kosinski:** Well I don't agree with that. I don't, I don't...

**Douglas Kellner:** The New York City rule is over inclusive in my view and, of course, the Columbia County rule hand counts them in every contest no matter how close it is and that's a lot of extra work for them.

**Kim Galvin:** I withdraw my statement that we were close.

**Gregory Peterson:** No, actually we are close though. We're talking about, we're talking about a machine audit and then we're talking about it...

**Kim Galvin:** Now that's a deal breaker.

**Douglas Kellner:** And the other problem I have is contrary to the bipartisan understanding that everybody had in 2005 and 2007...

**Kim Galvin:** Single Commissioner Escalation.

**Douglas Kellner:** Correct. It was always our understanding that either Commissioner would be able to escalate the audit if there was a discrepancy. And through the quirks of what happened in

the first case under this issue to reach the Court of Appeals, the Court of Appeals said that it's not a discrepancy unless both Commissioners agree that it's a discrepancy.

**Kim Galvin:** Unresolvable.

**Douglas Kellner:** Well so that effectively gives either Commissioner the veto power to prevent the escalation of an audit simply by saying oh that's not a discrepancy.

**Peter Kosinski:** Well you know I mean, I mean no to be fair though I don't think that's quite accurate. I think what could happen in that context if there's a discrepancy, if there's a disagreement there's court actions that could be brought if there is for example a bad faith decision by a Commissioner, not to escalate and the one Commissioner disagrees I think their opportunity is to go to court and convince a Judge this Commissioner is being unreasonable. There's a legitimate discrepancy.

**Douglas Kellner:** You articulate that and put it into the regulation.

**Peter Kosinski:** Well I don't know that I have to do that Commissioner. I think, I think...

**Douglas Kellner:** No you do have to do it because right now our regulation is interpreted as saying either Commissioner can veto it.

**Peter Kosinski:** Well veto means they don't do it at the Commissioner level but just like a petition challenge for example where the Commissioners disagree and the petition stands, if I disagree with that ruling I go to court, I convince a Judge that one Commissioner was wrong and we go ahead and invalidate the petition. The same process is available to a Commissioner or a Candidate or anybody else in this context that if the two Commissioners don't agree I go to court and I convince a Judge. Same thing with these audits that you're talking about. It isn't that there's no opportunity to go and get a full audit but you may have to convince a court that there's a legitimate reason to have. You know we see what's going on in these other states right now with these audits they're trying to have of the Presidential Election. What do they have to do? They have to go to a Judge and convince him or her there's a legitimate reason for opening up all these machines. I think that process serves the public better than just automatically opening up all machines and having human intervention even though there's no demonstration of any problem or any evidence of any issues, machine malfunctions or anything else to prompt that kind of opening. All you have to do is show the election was close or I have, you know, I guess in Columbia County I don't even have to show that. I think that having a court oversee this like they do in other situations like they do in petition challenges is a much better way to go than just have arbitrary opening up of all of our machines and ongoing hand counts all over the state simply because someone thinks they should have won when they lost or whatever the reasoning is. So, I have, as you can tell, disagreements with what's going on in these two jurisdictions and I think it's something that needs to be discussed. So, I would like to have that as part of the discussion and as we're going forward on the automated audits issue. And if that's all we have on that, I think we're ready to move on. Do you have anything else that you...?

**Douglas Kellner:** I could go on and on but we're not really listening to each other.

**Peter Kosinski:** You know I could go on and on too. Okay well I'd ask the staff to still try to see if we can't come to a decision on these issues if we can find common ground. Okay next we're going to new business then. New business we have our independent expenditure regulations. My understanding of this is that we did adopt emergency regulations because of the new statute back in when was it, August? We adopted them for this election cycle.

**Bill McCann:** September.

**Douglas Kellner:** We have to continue.

**Peter Kosinski:** We have to continue them and also, we have to put these out for public comments so that we can adopt them...

**Bill McCann:** Formally.

**Peter Kosinski:** as a final document. So, that's what we're doing today. There's no changes here I assume of these from what we adopted back in...

**Bill McCann:** There's one de minimus sentence that we inadvertently removed but we put it back in.

**Douglas Kellner:** I move the resolution as distributed to the Commissioners.

**Peter Kosinski:** Is there a second?

**Gregory Peterson:** Second.

**Chairman Kosinski:** All in favor?

(Chorus of ayes) Opposed? Okay that's adopted and that will go forward. And the last item under new business is a discussion of Election Day polling place issues. I'm not sure who's going to discuss that but that's on the agenda.

**Douglas Kellner:** Oh okay is this, this is mine alright. Alright good. We have speaking of regulations we have regulation 62-1019C1 which requires that County Boards of Elections Staff provide sufficient equipment and staff so the voters do not have to wait more than thirty minutes. I think it's a good regulation and it is generally complied with throughout the state with one exception, New York City. And the exception is in the Presidential General Election Years. New York City unlike the rest of the state uses basically a one size fits all formula. I should start, also add that New York City did a number of things for this Presidential Election to improve their performance over four years ago, and there is a long list of items that they did. What they did not do, however, is comply with our thirty-minute rule. There are significant hurdles that they need to overcome in order to come into compliance because in order to expand

the number of poll workers and poll books in order to prevent people from waiting for more than thirty minutes, they need more space and that means the need for the November Presidential Elections a different poll site configuration than they use for all other elections. I'm not suggesting, you know obviously they could use more poll sites but then voter notice and everything else, but if you're in a public school which is closed on Presidential Election Day you can expand into additional space in the school and there are lots of things that could be done. But we need to enforce our regulation basically and I think the first step is to send another letter to the city opening that issue. And that's why I wanted to bring it up for discussion in terms of how to how we enforce our regulation to bring New York City into compliance?

**Peter Kosinski:** You know I don't know the answer. Is there a mechanism for us to enforce the regulation?

**Douglas Kellner:** Well the most serious mechanism would be for us to issue an order which we have the power to do under the Election Law. I'm not suggesting at this point that we would do that. And then, of course, if we had an order we could go into, well we could go into court to enforce the order. I'm not suggesting that either.

**Andy Spano:** Haven't we sent a letter previously...

**Douglas Kellner:** We did send a letter. They did respond to it. They did many of the things that they said they would do in their response. But the one thing they didn't do was eliminate thirty minute lines.

**Peter Kosinski:** Do we have a quantification of how big of a problem, how many poll sites have this problem in New York City?

**Andy Spano:** There was an International Organization that evaluated poll sites throughout the entire country. And this was I think probably one of the largest problems but the minimis in terms of the county and how many poll sites so if it's happening in New York it's significant.

**Douglas Kellner:** Well I want to say that in my, I visited about two dozen poll sites on Election Day. Basically, I started on the left side of Manhattan and worked north and up to Westchester County. Amazing how the Woodlawn Section of the Bronx and Mount Vernon you know are virtually indistinguishable in terms of economics and population characteristics. But in Woodlawn in the Bronx there was a two-hour line and then, and then you go to Mount Vernon no lines. You go to Yonkers no lines. And what is the difference? Well the difference is that in Westchester they scaled up to handle the crowd for a General Election.

**Peter Kosinski:** Do they have more poll sites in Westchester on Presidential Election Days than they do for non-Presidential?

**Andy Spano:** Why would they?

**Peter Kosinski:** Because of the crowds.



**Douglas Kellner:** I don't believe so. I think they just scale up.

**Peter Kosinski:** You mean they have more workers?

**Douglas Kellner:** They have more workers right.

**Andy Spano:** A lot of them are combined I mean you know four, five poll sites in one location.

**Peter Kosinski:** Well I've been at a New York City Poll Site. I mean I've seen where they have ten ED's in a poll site and yeah that becomes very crowded.

**Douglas Kellner:** And they have no room to scale up.

**Peter Kosinski:** That's the problem I can see where that's a problem.

**Douglas Kellner:** And so instead of, instead of saying we have to address that problem, they just said well there's nothing we can do about it and we'll have to live, well I wouldn't say they said we'll have to live with thirty minute lines. But they said, but you know they drew the limit at their mediation efforts at scaling up because they said well that would require new poll site plans. So, what I am suggesting is that we start putting pressure on them to draw up poll site plans for 2020 and that they start that process now when it won't be too late to get this done.

**Kim Galvin:** In fairness if they did implement all of these things they wouldn't really know the net effect until after Election Day. So, they did put a lot of curative things in there.

**Douglas Kellner:** They did.

**Kim Galvin:** And the result didn't quite get there so now we need to address, work with them again to do more to hopefully have a better outcome.

**Peter Kosinski:** Did it get better this time?

**Kim Galvin:** I think it was.

**Douglas Kellner:** Well, yes, I mean they eliminated the poll cards they used to have so it cut in half the amount of time it takes each voter at the book table.

**Kim Galvin:** So they did, they took the steps because everyone complained and they didn't, I mean for all they knew the result could have been a twenty-nine-minute wait but it was an hour so we have to get to the next step.

**Peter Kosinski:** I can see, I can see where you put ED's in one poll site you are running the risk of having lines of people coming into that poll site because now you're trying to accommodate

maybe ten thousand people in a single poll site that may I can see clog the doorways and become difficult for people to get in.

**Douglas Kellner:** The major bottleneck is not the door, it's...

**Kim Galvin:** The table.

**Douglas Kellner:** the book table.

**Peter Kosinski:** Okay the book table but, but I think putting that many people in one site is probably a, you know I don't see that Upstate. I think from my perspective you know looking Upstate...

**Douglas Kellner:** You don't have ten thousand voter poll sites.

**Peter Kosinski:** No you don't. I mean I go to a poll site there might be two or three...

**Kim Galvin:** You don't have ten thousand people.

**Peter Kosinski:** and so you just don't have the number of people trying to get in there. I don't completely understand why New York City doesn't have more poll sites so that instead of jamming ten ED's into one...

**Kim Galvin:** Isn't it harder to get poll sites in New York City?

**Andy Spano:** What is that?

**Kim Galvin:** Could they have private buildings they're...

**Douglas Kellner:** It's not harder it, I mean hard is all relevant. The rules for getting poll sites in New York City are the same as the rules for getting poll sites all around the state. And I would argue in some respects it's easier because our Poll Site Law its 4-104 provides that any building that gets a tax abatement must provide for poll site. Which means every building that gets a 421A Tax Abatement in New York City is required to provide their lobby as a poll site if the Board so chooses. Alright I won't get into the politics and the personnel issues. I'm just suggesting that we as an agency should take a roll in this and I wanted to feel out my fellow Commissioners to see...

**Peter Kosinski:** No they shouldn't have to wait two hours to vote anywhere I mean I agree.

**Male:** Two-hour vote, two hour waits where?

**Gregory Peterson:** Two hour vote, two hour waits where?

**Douglas Kellner:** All over in New York. Basically, basically what I found of the, Manhattan and the Bronx were the sites that I visited. Anecdotally I don't have hard data on this that I

would say anywhere from 20% to a half of all New York City voters had to wait more than half an hour. Okay? And that, and that a substantial number and by the way twenty percent is almost a million voters. You know?

**Gregory Peterson:** No that's a lot.

**Douglas Kellner:** I'm sorry half and there were a substantial number of people who had to wait more than an hour. So, okay I appreciate your...

**Peter Kosinski:** I think Anna has a comment that she wants to make.

**Anna Svizzero:** I've been good. But I don't understand why we can't rethink what happens in New York since they have this unique problem. If we have to get away from neighborhood poll sites where you can't vote a block or two away from your home and you have to have supercenters, there are a number of buildings in New York that lend themselves to that arrangement so that you could have more people. But the people have to be trained. They have to be able to find names in a manual poll book. One of New York City's big deals was to put ABCs on the end of the pages in the poll book. I don't know why we can't get to the electronic poll books that help you spell just like when you try to query something in the system. If you're looking for Joe Smith it will give you a lot of options and that's where every bottleneck line in every state is, is at the sign in table because people can't find voters. I can remember back when we had ledgers and you had to sign the back of buff cards, they weren't in alphabetic order in my county and in a lot of counties, they were in street order so you gave them your house number. I can't screw it up, I can find 123 Main Street.

**Kim Galvin:** Well I think electronic poll book would require you to get a whole new field of poll workers. ABC was probably better.

**Anna Svizzero:** I just told you I was good and I'm not going to be good anymore. I've got nothing to lose here. But you have to rethink the process because the old rules don't work.

**Douglas Kellner:** Okay but Anna as you know, I strongly support electronic poll books so that's never been an issue but we need to start now not by talking about a new system that requires legislative action but to bring them into compliance with the existing law and not allowing them to use an excuse like we need electronic poll books.

**Anna Svizzero:** I'm not either. I'm only suggesting that if you can't give neighborhood voting because you don't have a site that accommodates the voters in that neighborhood then you have to move to a bigger site, not a super site but something in between a neighborhood and the Javits Center.

**Douglas Kellner:** See in my view, a lot of that is excuse making and that when you peel it away, it's just an excuse.

**Anna Svizzero:** Which is why when I raised it they don't talk to me anymore because they tell me I don't know what I'm talking about. So that's what I said, I've been good, now I'm not good anymore. That was my 2 cents. We've tried. We tried 4 years ago to not have this problem today.

**Bob Brehm:** One of the items that we have recommended that we may be able to assist or at least refocus on and it was in the Presidential Commission reports and almost any other group that put the tool out there in government for the Federal Election Commission and others which is the Q&N Theory. It's a simple formula. We know how many election sites there are. We know how many EDs there are. We can take the census of how many voters could have shown up. We know how many did show up. But if you just take the, it takes X number of seconds at each of those steps in the Q at the sign in table, at a multiple site you could look at the formula and say, "If you want to bring 10,000 people to this building and there are 3 sites and the average voter takes a minute 30 to get through those 3 stops", then you can at least figure out how many staff members you need within that hour day and also and the problem that we had recommended since this equipment went in use in 2010 is for counties to keep the data. And there are a number of ways to keep it throughout the day. So you could have some track record to know that in this polling site over history, 30% of the people show up within the first 6 hours or something like that to factor in. Because once you've gone past that deadline and we've testified to the Qing issue at the 2015 Assembly hearings, those resources you could sit there and run the formula and at least have a much better shot at reducing those 2 hour wait lines or those 1 hour wait lines if you saw that if I'm going to bring 10,000 people in this building, I need at least as many...

**Peter Kosinski:** My guess is there's nothing we're talking about here that the City isn't aware of.

**Douglas Kellner:** Certainly that is.

**Peter Kosinski:** And that for some reason and I don't know the reason, they have chosen to not address because this is not a new problem, I know its been an ongoing problem in the City of New York that they have these long lines at certain poll sites year after year, at least Presidential year and for some reason, why I don't completely understand, they fail to address. And I think to me the simple answer is more poll sites frankly because that's what I see working in Upstate New York is we just have more poll sites I guess because I don't see the large number of people try to jam into one poll site. Where I go I think there's 3. I've never been in one with more than 3 or 4. So its not rocket science to me. It's pretty simple, if you're going to try to jam 10,000 people into that site, you're going to have a problem. So you should break it out, you should have 3 sites instead of 1. Why they don't do that I do not know. I don't understand New York City politics that well that I can say that but the City is well aware of all these problems. I don't think there's anything we're saying here today they aren't aware of and have chosen not to address even though I hear complaints every single, at least Presidential years and sometimes non-Presidential years of people having to wait in long lines in New York City. I agree with you it's not right. It should be addressed but for some reason the City is not able to do it.

**Douglas Kellner:** So we'll ask Brendan and Anna to circulate a draft.

**Peter Kosinski:** Yeah, that's fine and Risa had a comment.

**Risa Sugarman:** I just and I've heard that you've discussed this and it's a very important issue and I would just like to raise another issue in New York City that for 4 years the City has been under an order with the Center for Independence of the Disabled to provide access to disabled at the poll sites. And each year the Center does a survey of sites to see if the City is in better compliance and they produce a report on their website each year and again this year in the 2016 both at the primary and at the general election they surveyed 64 sites and most of them are in schools which have to be ADA compliant and again, only 22% of those schools were without barriers. And I have a copy for the Commissioners and it's just astounding to me that with HAVA and even the resources the Election Law that we have that the City still is unable to provide access without barriers to those with disabilities. So I would ask the Board that with all of the work that you do to provide those access for voters to not have to wait on lines that you also consider to assist those voters with disabilities to have access to their polling sites without barriers. And I would just hand this up so you can see the report. Thank you.

**Peter Kosinski:** I believe that is the end of the, are we going into Executive Session?

**Douglas Kellner:** Yeah, I want to go into Executive Session to discuss the Eason Case. The only people who need to be present for that would be the Executive Directors and Counsels. Actually you can all stay.

**Peter Kosinski:** So let's make a motion to adjourn.

**Douglas Kellner:** Oh next meeting date.

**Peter Kosinski:** Let's make a motion to go into Executive Session but then we have to decide on a meeting date in the interim. Okay so let's do both. You're moving to go into Executive Session to discuss...

**Douglas Kellner:** Executive Session to discuss litigation.

**Peter Kosinski:** litigation. Second? All in favor? And before we go out of public we will set the next meeting date which I believe January 9<sup>th</sup> was being talked about. Is that good with everybody? 9<sup>th</sup>? The 9<sup>th</sup>. Okay, so that's that and we will now be, we're not coming back into public session so anybody that's watching we will not come back into public session. We'll take 30 seconds to get everything accommodated.